Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal

Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

Rule

Pilot Extension of Time Period for Commission Action

Date Expires

19b-4(f)(1) 19b-4(f)(4)

19b-4(f)(2) 19b-4(f)(5)

19b-4(f)(3) 19b-4(f)(6)

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Increase Session Fee for the Regulatory Element of the Continuing Education Program

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Angela Last Name Dunn

Title Director and Counsel

E-mail angela.dunn@phlx.com

Telephone (215) 496-5692 Fax (215) 496-6729

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/23/2005

By Angela Saccomandi Dunn Director and Counsel

(Note)

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Angela Dunn, angela.dunn@phlx.com
**Form 19b-4 Information**
The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

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**Exhibit 1 - Notice of Proposed Rule Change**
The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**
Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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**Exhibit 3 - Form, Report, or Questionnaire**
Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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**Exhibit 4 - Marked Copies**
The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

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**Exhibit 5 - Proposed Rule Text**
The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

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**Partial Amendment**
If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission’s permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e., partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to increase the Regulatory Element Session fee from $60 to $75 effective January 1, 2006.

A notice of the proposed rule change for publication in the *Federal Register* is attached hereto as *Exhibit 1* and a copy of Appendix A of the Exchange’s schedule of fees is attached hereto as *Exhibit 5*.

2. **Procedures of the Self-Regulatory Organization**

The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on December 12, 2005.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Counsel, at (215) 496-5692, or Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, at (215) 496-5179.

3. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

   a. **Purpose**

   The purpose of the proposed rule change is to provide notice to the Exchange’s membership of the recent increase to the Regulatory Element Session fee from $60 to $75, effective January 1, 2006. The Regulatory Element, a computer-based education program administered by the National Association of Securities Dealers (“NASD”) to

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help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program ("Program"). The Securities Industry/Regulatory Council on Continuing Education ("Council")\(^3\) was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.

It is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures\(^4\). In December 2003, the Council voted to reduce the Regulatory Element session fee from $65 to $60 effective January 1, 2004, in order to reduce the reserves to a level necessary to support current and expected programs and expenses. The Council decided to review the reserve level and evaluate the Regulatory Element session fee on an annual basis. The 2004 financial review and evaluation produced no change in the Regulatory Element session fee. In September 2005, the Council's annual financial review and evaluation

\(^3\) The Council currently consists of 20 individuals, 14 of whom are securities industry professionals associated with NASD member firms, and six of whom represent self-regulatory organizations (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Phlx.

\(^4\) The Regulatory Element session fee was initially set at $75 when NASD established the continuing education requirements in 1995. The fee was reduced in 1999 to $65 and again in 2004 to $60. The proposed fee increase returns the Regulatory Element session fee to its original level.
revealed that unless the Regulatory Element session fee were adjusted, the Council’s reserves were likely to be insufficient in 2006. The reasons for the declining surplus are: (1) lower than projected session volume resulting in a significant decrease in actual revenue over projected revenue; (2) higher delivery-related expenses beginning in 2006; and (3) costs associated with the rebuilding of PROCTOR®. At its September 2005 meeting, the Council voted unanimously to increase the Regulatory Element session fee from $60 to $75, effective January 1, 2006, in order to meet costs and maintain an adequate reserve in 2006.

Pursuant to Exchange Rule 640, each registered person is required to complete the Regulatory Element of the continuing education program. The Regulatory Element Session fee continues to be payable directly to the NASD. A notice will be provided to the Exchange’s membership of the increase in the fee and the effective date of the increase.

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5 PROCTOR® is a technology system that supports computer-based testing and training. The Regulatory Element program uses PROCTOR® to package content, deliver, score and report results, and maintain and generate statistical data related to the Program.

6 See Exchange Rule 640(a)(1) which states, “…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. 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…”
b. **Statutory Basis**

The Exchange believes that this is consistent with Section 6(b) of the Act\(^7\), in general, and furthers the objectives of Section 6(b)(4)\(^8\) and 6(b)(5)\(^9\) of the Act, in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Phlx members and other persons using its facilities, and that the Phlx rules must be 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. Phlx believes that the proposed rule change is designed to accomplish these ends by enabling the Program to be maintained on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

The Phlx 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.

5. **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.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

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\(^7\) 15 U.S.C. 78f(b).


7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act\textsuperscript{10} and Rule 19b-4(f)(2)\textsuperscript{11} thereunder. The Exchange proposes to make the implementation date January 1, 2006.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is similar to proposed rule changes filed by the NASD and the Chicago Board Options Exchange, Inc. (“CBOE”).\textsuperscript{12}

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Appendix A of Exchange’s schedule of fees.


\textsuperscript{11} 17 CFR 240.19b-4(f)(2).

\textsuperscript{12} NASD and CBOE both filed to increase the Continuing Education Fee from $60 to $75. See SR-NASD-2005-132 filed on November 22, 2005 and SR-CBOE-2005-108 filed on December 12, 2005.
SECURITIES AND EXCHANGE COMMISSION
(Release No.                  ; File No. SR-Phlx-2005-90)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Session Fee for the Regulatory Element of the Continuing Education Program

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 ______________________ 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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 Phlx, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,\(^3\) proposes to amend its schedule of fees to increase the Regulatory Element Session fee from $60 to $75 effective January 1, 2006.

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

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\(^3\) 17 CFR 240.19b-4.
the places specified in Item IV below. The Phlx 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 provide notice to the Exchange’s membership of the recent increase to the Regulatory Element Session fee from $60 to $75, effective January 1, 2006. The Regulatory Element, a computer-based education program administered by the National Association of Securities Dealers (“NASD”) to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program ("Program"). The Securities Industry/Regulatory Council on Continuing Education ("Council")\(^4\) was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.

\(^4\) The Council currently consists of 20 individuals, 14 of whom are securities industry professionals associated with NASD member firms, and six of whom represent self-regulatory organizations (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Phlx.
It is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures. In December 2003, the Council voted to reduce the Regulatory Element session fee from $65 to $60 effective January 1, 2004, in order to reduce the reserves to a level necessary to support current and expected programs and expenses. The Council decided to review the reserve level and evaluate the Regulatory Element session fee on an annual basis. The 2004 financial review and evaluation produced no change in the Regulatory Element session fee. In September 2005, the Council's annual financial review and evaluation revealed that unless the Regulatory Element session fee were adjusted, the Council's reserves were likely to be insufficient in 2006. The reasons for the declining surplus are: (1) lower than projected session volume resulting in a significant decrease in actual revenue over projected revenue; (2) higher delivery-related expenses beginning in 2006; and (3) costs associated with the rebuilding of PROCTOR®. At its September 2005 meeting, the Council voted unanimously to increase the Regulatory Element session fee from $60 to $75, effective January 1, 2006, in order to meet costs and maintain an adequate reserve in 2006.

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5 The Regulatory Element session fee was initially set at $75 when NASD established the continuing education requirements in 1995. The fee was reduced in 1999 to $65 and again in 2004 to $60. The proposed fee increase returns the Regulatory Element session fee to its original level.

6 PROCTOR® is a technology system that supports computer-based testing and training. The Regulatory Element program uses PROCTOR® to package content, deliver, score and report results, and maintain and generate statistical data related to the Program.
Pursuant to Exchange Rule 640, each registered person is required to complete the Regulatory Element of the continuing education program. The Regulatory Element Session fee continues to be payable directly to the NASD. A notice will be provided to the Exchange’s membership of the increase in the fee and the effective date of the increase.

2. **Statutory Basis**

The Exchange believes that this is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act, in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Phlx members and other persons using its facilities, and that the Phlx rules must be 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. Phlx believes that the proposed rule change is designed to accomplish these ends by enabling the Program to be maintained on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.

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7 See Exchange Rule 640(a)(1) which states, “...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. 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…”


B. **Self-Regulatory Organization's Statement on Burden on Competition**

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act\(^1\) and Rule 19b-4(f)(2)\(^2\) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the 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.

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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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-2005-90 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-2005-90. 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 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 office 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-2005-90 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. ¹³

Margaret H. McFarland
Deputy Secretary

## Exhibit 5

### Appendix A

### Permit Fees\(^{20}\)

#### Order Flow Provider Permit Fee

- a. Permits used only to submit orders to the equity, foreign currency options, or options trading floor (one floor only) $200.00 per month
- b. Permits used only to submit orders to more than one trading floor $300.00 per month

#### Floor Broker, Specialist, or ROT (including RSQTs and SQTs) or Off-Floor Trader Permit Fee

- a. First Permit $1,200.00 per month
- b. Additional permits for members in the same organization $1,000.00 per month

#### Excess Permit Holders $200.00 per month

#### Other Permit Holders\(^{21}\) $200.00 per month

#### Foreign Currency User Fee $1,200.00 monthly

#### Application Fee $350.00

#### Initiation Fee\(^ {22}\) $1,500.00

#### Account Fee $50.00 monthly for each account beyond the number of permits billed to that member organization

#### Transfer Fee for FCO Participant $500.00

#### Trading Post/Booth $250.00 monthly

#### Trading Post with Kiosk $375.00 monthly

#### Kiosk Construction Fee (when requested by specialist) Pass-through cost

#### Controller Space $250.00 monthly

#### Floor Facility Fees $125.00 monthly

#### Shelf Space on Equity Option Trading Floor $125.00 monthly

#### Direct Wire to the Floor $20.00 monthly

#### Telephone System Line Extensions $22.50 monthly/per extension

#### Wireless Telephone System $100.00 monthly

#### Tether Initial Connectivity Fee $1,100.00 per initial connection

#### Tether Monthly Service Fee $150.00 monthly

#### Execution Services/Communication Charge $200.00 monthly

#### Stock Execution Machine Registration Fee $300.00 (Equity Floor)

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\(^{20}\) The Exchange has established the date of notification of termination of a permit as the date that permit fee billing will cease. Additionally, a permit holder will be billed only one monthly permit fee if the holder transfers from one member organization to another previously unrelated member organization as a result of a merger, partial sale or other business combination during a monthly permit fee period in order to avoid double billing in the month the merger or business combination occurred. These policies will be effective as of February 2, 2004.

\(^{21}\) A permit holder or the member organization they solely qualify must apply for “other” status in writing to the Membership Services Department. This status requires that a permit holder or the member organization have no transaction activity for the applicable monthly billing period. Should a permit holder actively transact business during a particular month, the highest applicable monthly permit fee will apply to such permit holder and member organization for that monthly period. The “other” status only applies to permit holders who solely qualify their member organization. These policies will be effective as of February 2, 2004.

\(^{22}\) This fee is imposed on a member upon election, on a non-member FCO participant upon the purchase of an FCO participation, and on persons or entities registering as approved lessors.
Equity, Option, or FCO Transmission Charge $ 750.00 monthly

FCO Pricing Tape $ 600.00 monthly
PHLX CCH Guide $ 200.00 annually

Option Report Service
  (New York) $ 600.00 monthly
  (Chicago) $ 800.00 monthly

Instinet, Reuters Equipment cost passed through
Hyperfeed Fee 100% of cost passed through

Examinations Fee $2,000.00 monthly or pass-through of another SRO's fees

Review/Process Subordinated Loans $ 25.00

Registered Representative Registration:
  Initial $ 55.00
  Renewal $ 55.00 annually
  Transfer $ 55.00
  Termination $ 30.00

Trading Floor Personnel Registration Fee $ 25.00 monthly

Off-Floor Trader Initial Registration Fee $ 100.00

Off-Floor Trader Annual Fee $ 350.00

Continuing Education Fee $ 75.00

No Additional Changes are being made to Appendix A

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23 PHLX Guides will be provided to new members/member organizations without charge but there will be a $200/year charge for renewals. Alternatively, members/member organizations can get access to the PHLX Guide at no cost through the internet.

24 This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: 1) inactive organizations; 2) organizations operating from the PHLX trading floor or as remote specialists which have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities or remote specialist activities; 3) organizations for any month where they incur transaction or clearing fees charged directly by the Exchange or by its registered clearing subsidiary, provided that the fees exceed the examinations fee for that month; and 4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of or controlled by or under the common control with an exempt member or participant organization. An inactive organization is one which had no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

25 For the purposes of these fees, the registered representative categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom limited general securities registered representatives and shall not apply to “off-floor” traders, as defined in Phlx Rule 604(e).

26 This fee is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange’s trading floor, such as clerks, interns, stock execution clerks and other associated persons, but who are not registered as members or participants.

27 This 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 the NASD.