

MEMORANDUM

TO: Members and Member Organizations

FROM: John Dayton

DATE: July 24, 2008

RE: Series 7 Requirements for Off-Floor Traders

The Securities and Exchange Commission recently approved a proposed rule change, SR-Phlx-2008-12, which modified Phlx Rule 604(e)(iii) regarding the category of persons subject to an exemption from the requirement that Off-Floor Traders¹ complete the Series 7 General Securities Registered Representative Examination (“Series 7”). The exemption would apply to Market Maker Authorized Traders² (“MMATs”) on XLE, the Exchange’s equity trading system, and to Off-Floor Traders who solely handle and/or make trading decisions regarding agency orders and any bona fide errors related to those agency orders (“Agency Brokers”). Phlx believes that the exemption will maintain an exemption for persons who were formerly participants on the Exchange’s equity trading floor (“Former Floor Participants”) who are now Off-Floor Traders participating on XLE yet still require day traders to successfully complete the Series 7.

MMATs are those persons associated with Market Makers³ on XLE who perform the market maker functions for the Market Maker. MMATs are required to register with Phlx and therefore are easily identified. MMATs, by virtue of their responsibilities to constantly maintain orders on XLE, focus on trading on XLE and are not functioning as day traders that routinely trade at multiple venues. Also, because day traders trade for their own account, they will not qualify, by definition, for the exemption for Agency Brokers. Further, a Supplementary Material was adopted for Rule 604 providing that the

¹ 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.”

² See Phlx Rule 1(m).

³ See Phlx Rule 1(l).

Series 7 requirement and exemption for MMATs in Rule 604(e) is independent of the requirements on MMATs in Rule 171(b)(5).

Agency Brokers correspond to former floor brokerage organizations that handled agency orders while on the former physical equity trading floor.⁴ Some Agency Brokers, including Former Floor Participants, may trade primarily on markets other than Phlx and would therefore not qualify for the former exemption in Rule 604(e)(iii) that applied to a Former Floor Participant's relative amount of activity done on XLE.⁵ The rule text is attached.

Questions regarding the rule change may be directed to John Dayton at (435) 783-6415. Questions regarding the requirement of Rule 604(e) may be directed to Bill Bunting at (215) 496-5401. Questions regarding XLE functionality may be directed to the XLE Help Desk at (215) 496-5311 or 1-877-678-PHLX.

⁴ Phlx Rule 604(a) requires anyone who conducts a public business or has duties customarily performed by a Registered Representative to maintain an effective Series 7 or equivalent predecessor examination/registration. This provision is independent of Phlx Rule 604(e)(iii) and not affected by this proposal.

⁵ The proposed exemption at Phlx would not preclude the effect of the rules regarding the Series 7 at other markets.

Underlining indicates additions; brackets indicate deletions

Rule 604. Registration and Termination of Registered Persons

(a)-(d) No Change

(e)(i) Every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA, 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 ("off-floor traders"), must successfully complete the Series 7 General Securities Registered Representative Examination.

(ii) The requirement to successfully complete the Series 7 examination applies to current off-floor traders as well as future off-floor traders who affiliate with members at a later date.

(iii) Any off-floor trader who (A) is currently a member in good standing of a national securities exchange or has ever been a member in good standing of a national securities exchange for not less than 12 consecutive years, (B) is a MMAT, or (C) solely handles and/or makes trading decisions regarding agency orders, and any bona fide errors related to those agency orders,[or who is primarily engaged in (A) submitting proprietary or agency orders for execution on XLE, or (B) making trading decisions with respect to trading on XLE,] shall be exempt from the examination requirements set forth in section (i) and (ii) hereof.

Supplementary Material:

The exemption in Rule 604(e)(iii)(B) for MMATs is independent of the requirement in Rule 171(b)(5) on MMATs regarding the Series 7 Examination. MMATs must meet, if applicable, the requirements in both Rule 171(b)(5) and Rule 604(e)(i)-(ii).