

**MEMORANDUM**

**TO:** Members and Member Organizations  
**FROM:** William A. Bunting, Director, Examinations Department  
**DATE:** February 27, 2007  
**SUBJECT:** Amendments to Rule 712, Independent Audit

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A proposed rule change filed with the Securities and Exchange Commission to amend Exchange Rule 712, Independent Audit, has become effective. The proposed rule change clarified that in certain circumstances a member organization may request an extension of time to file its annual audit from the Exchange in writing prior to the due date of the annual audit, and provided for the imposition of a fee to be assessed for the late filing of an annual audited financial statement.

Rule 712 is set forth below, with new text underlined:

**Independent Audit**

Rule 712. Each member organization doing any business with the public shall at least once each calendar year cause to be made an audit of its affairs, conducted in accordance with applicable audit requirements of the Securities and Exchange Commission and such other requirements as deemed appropriate by the Exchange, by independent public accountants and shall have such accountants prepare an answer to the financial questionnaire of the Exchange based upon such audit.

Pursuant to Rule 17a-5(d), promulgated under the Exchange Act, all broker-dealers are required to file annually audited financial statements (“Annual Audits”) with their Designated Examining Authority and the SEC, no more than 60 days after the date of the year end financial statements. A member organization unable to meet the filing deadline for its Annual Audit as a result of exceptional circumstances may request an extension of time, in writing, prior to the filing due date. Annual Audits not received by the Exchange by the due date, or revised due date if an extension has been granted, will be subject to a late fee as set forth below for each week or any part thereof that the Annual Audit has not been filed, as calculated based on the due date or revised due date for filing the Annual Audit. (Implemented on a running three-year basis.)

- (i) \$100 per week for the first late filing in a three-year period.

- (ii) \$300 per week for the second late filing in a three-year period.
- (iii) \$1,000 per week for the third late filing in a three-year period.

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Member organizations for which the Phlx is the Designated Examining Authority should utilize the procedures outlined below when requesting an extension in which to file their annual audit. Members and member organizations for which the Phlx is not the DEA should submit such requests to their respective DEA and supply a copy to the Exchange. The written request should provide the following information:

1. the amount of time requested on the extension;
2. the specific reason(s) the extension is being requested; and
3. a letter from the outside independent auditors in which the auditors represent that the organization is in compliance with Exchange Act Rules 15c3-1 and 15c3-3 and CFTC Regulations 1.20 and 30.7; that an unqualified opinion is expected to be issued; and, that no material inadequacies or books and records problems exist.

General questions regarding the Independent Audit requirements, or Phlx Rule 712 should be directed to William Bunting, Director, Examinations Department at (215) 496-5401 or Robert Alexander at (215) 496-5186.