

6(b)<sup>37</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>38</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to protect investors and the public interest, to remove impediments to and to perfect the mechanism of a free and open market and a national market system. Specifically, the proposal is designed to facilitate the execution of orders at the opening by providing a means of establishing a single price opening. This will expedite the opening of option issues on the Exchange, which will serve all market participants. It will eliminate problems associated with later openings, including the elimination of backlogs of unexecuted orders that can result when opening rotations are conducted entirely manually.

#### *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 competition that is 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*

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-99-24 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>39</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41776; File No. SR-Phlx-99-07]

#### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change Requiring Off-Floor Traders for which the Phlx is the Designated Examining Authority to Successfully Complete the General Securities Representative Examination Series 7**

August 20, 1999.

On March 15, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change would amend Phlx Rule 604, Registration and Termination of Registered Representatives, to require successful completion of the General

Securities Representative Examination Series 7 ("Series 7 Exam") by persons who are associated with members or participant organizations<sup>3</sup> for which the Exchange is the Designated Examining Authority ("DEA")<sup>4</sup> and who trade off the floor of the Exchange ("off-floor traders").<sup>5</sup>

On April 6, 1999, the Exchange filed Amendment No. 1 with the Commission, removing a description of professional traders from the filing.<sup>6</sup> On April 12, 1999, the Exchange filed Amendment No. 2 with the Commission, making technical changes to the proposed rule.<sup>7</sup> On August 18, 1999, the Exchange filed Amendment No. 3 with the Commission, which revised the rule language.<sup>8</sup> Notice of the proposed rule change, as amended, together with the substance of the proposal, was published in the **Federal Register**.<sup>9</sup> The Commission received 22 comment letters from 21 commenters on the filing.<sup>10</sup> This order approves the proposed rule change, as amended.

<sup>3</sup> The term "participant organizations" refers to foreign currency options participant organizations, which includes foreign currency options participants firms and foreign currency options participant corporations. Phlx Rules 13-16.

<sup>4</sup> Pursuant to Section 17(d) of the Exchange Act, 15 U.S.C. 78q(d), the Commission may "allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocations, such self-regulatory organizations share authority under this title." The DEA is the self-regulatory organization ("SRO") that has the responsibility for examining a broker or dealer member for compliance with the federal securities laws and the rules of the SRO.

<sup>5</sup> Under the proposed rule change, Phlx Rule 604 would be retitled as Registration and Termination of Registered Persons.

<sup>6</sup> See Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division of Market Regulation ("Division"), SEC (April 6, 1999).

<sup>7</sup> See Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division, SEC (April 12, 1999).

<sup>8</sup> See Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division, SEC (Aug. 18, 1999). Amendment No. 3 revised the proposed rule language for paragraph (e) of Phlx Rule 604. (Amendment No. 3 was inadvertently designated as Amendment No. 2 by the Phlx).

<sup>9</sup> Securities Exchange Act Release No. 41306 (April 16, 1999), 64 FR 22665 (April 27, 1999).

<sup>10</sup> See Letter from Donald M. Nisonoff, Senior Counsel, Proskauer Rose LLP to Secretary, SEC (May 14, 1999) ("Nisonoff Letter"); E-mail from Chris Pheil to Rule-Comments at OSI (May 3, 1999); E-mail from Victor Shakerchi to Rule-Comments at OSI (May 3, 1999); Letter from H.R. Roger Menear III to Secretary, SEC (May 7, 1999); Letter from Brian Dalinsky to Secretary, SEC (May 7, 1999); Letter from Vladimir M. Slavinsky to Secretary, SEC (May 7, 1999); Letter from Joseph H. Phoenix to Secretary, SEC (May 7, 1999); Letter from Aleksandr E. Shapiro to Secretary, SEC (May 7, 1999); Letter from Dan Dimitrijevic to Secretary, SEC (May 7, 1999); Letter from Nelson R. Davis, Jr. to Secretary, SEC (May 10, 1999); E-mail from Sean von Tegen to Rule-Comments at OSI (May 12, 1999); E-mail from Dan Laycock to Rule-Comments at OSI (May

<sup>37</sup> 15 U.S.C. 78f(b).

<sup>38</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## I. Background and Summary

Phlx Rule 604 specifies the qualification requirements for persons conducting a public business or duties customarily performed by registered representatives. Specifically, these associated persons are required to register on Form U-4, Uniform Application for Securities Industry Registration or Transfer, and to pass the Series 7 Exam and maintain an effective Series 7 Full Registration/General Securities Representative registration.<sup>11</sup> In addition, Phlx Rule 604 specifies the qualification requirements for associated persons of a member or participant organization for which the Exchange is the DEA when these persons are not registered representatives, but are compensated directly or indirectly for trading securities for the firm's account.<sup>12</sup> Currently, this class of associated persons, which includes the Phlx off-floor traders who are the subject of the proposed rule change, are only required to file a Form U-4.

The Exchange proposes to amend Phlx Rule 604 to require successful completion of the Series 7 Exam by persons who are associated with members or participant organizations for which the Exchange is the DEA and who trade off the floor of the Exchange. The Exchange believes those persons to whom the new examination requirement would apply primarily are associated with limited liability companies ("LLC") for the purpose of

trading securities off the floor of the Exchange for the firm's account. According to the Exchange, these off-floor traders generally become members of an LLC to avail themselves of good faith margin<sup>13</sup> provided through the LLC's Joint Back Office<sup>14</sup> agreement with its clearing agent.

The proposal would require all currently registered associated persons who trade off the floor of the Exchange to register to take the Series 7 Exam within 30 days of the Exchange's notice to its membership of this requirement, and to successfully complete the Series 7 Exam within six months of the date of notice by the Exchange.<sup>15</sup> Those associated persons covered by the rule change will be required to notify the Exchange promptly that they have registered to take the Series 7 Exam. Persons who become associated with member organizations or participant organizations after the date of notice of this requirement must successfully complete the Series 7 Exam prior to conducting securities trading activities for which the examination is mandated.

## II. Summary of Comments and the Exchange's Response

All 21 commenters expressed concerns about the proposal. Twenty commenters stated that, if the Exchange were to require an examination for off-floor traders, the Limited Representative-Equity Trader Examination ("Series 55 Exam"), which qualifies individuals to trade equity and convertible debt securities on a principal or agency basis, or another unspecified examination, would be more appropriate for those traders.<sup>16</sup> Some of these commenters argued that the Series 55 Exam is more relevant for off-floor traders. Two commenters added that the proposal will discourage trading off the floor of the Exchange without any regulatory benefit, because the Series 7 Exam covers a wide range of products and activities that typically

are not engaged in by off-floor traders.<sup>17</sup> One of these commenters also objected to the proposal because in his view: (1) Off-floor traders associated with LLCs have limited interaction with traders at other firms and no contact with customers; (2) adequate controls exist now to limit any possible impact of trading off the floor of the Exchange;<sup>18</sup> and (3) the proposal is an indirect attempt to regulate credit used by the off-floor traders.<sup>19</sup> Another commenter stated that the proposal discriminates in favor of certain parties and against others because the Series 7 Exam is not required of floor traders and others conducting similar businesses.<sup>20</sup>

The Phlx in its response letter stated that the Series 7 Exam, rather than the Series 55 Exam, is appropriate for a logistical reason: To qualify to take the Series 55 Exam, an individual must first pass either the Series 7 Exam or the Corporate Securities Limited Representative Qualification Examination ("Series 62 Exam").<sup>21</sup> The Phlx believes that it is more practical to require the Series 7 Exam only, rather than both the Series 7 Exam and the Series 55 Exam. The Phlx also responded that the Series 55 Exam is not suitable because it is used to qualify individuals to trade equity and convertible debt securities on a principal or agency basis, with an emphasis on Nasdaq market maker activities and obligations. Moreover, the Exchange noted that the Series 55 Exam was designed with the assumption that the participant will already have been thoroughly tested on the critical areas in the Series 7 Exam (such as compliance with federal and state laws and industry regulations, characteristics of different investment products, investment risks, and principal factors affecting securities markets and prices for individual securities).

4, 1999; E-mail from Barry Pozmantier to Rule-Comments at OSI (May 6, 1999) ("Pozmantier E-mail"); E-mail from David Kolpak to Rule-Comments at OSI (May 18, 1999); E-mail from David Wacker to Rule-Comments at OSI (May 16, 1999); E-mail from Jerry Wickey to Rule-Comments at OSI (May 16, 1999); E-mail from John Hodges to Rule-Comments at OSI (May 16, 1999); E-mail from Alan Goldstein to Rule-Comments at OSI (May 16, 1999); E-mail from Peter Kulbokas to Rule-Comments at OSI (May 20, 1999); Letter from P.L. Blackburn, Office Manager, Bright Trading, to Secretary, SEC (May 10, 1999) ("Blackburn Letter"); Letter from Ron Owens to SEC (May 15, 1999); Memorandum to File No. SR-PHLX-99-07 (June 1, 1999) (telephone conference with Donald Nisonoff and Saul Cohen, Proskauer Rose, LLP).

<sup>11</sup> See Phlx Rule 604(a).

<sup>12</sup> Phlx Rule 604(d) specifies that every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, whether such securities are those dealt in on the Exchange or those dealt in over-the-counter, who is not otherwise required to register with the Exchange, must file Form U-4, Uniform Application for Securities Industry Registration or Transfer, with the Exchange. See also Securities Exchange Act Release No. 36515 (November 27, 1995), 60 FR 62119 (December 4, 1995) (File No. SR-PHLX-95-58) (order approving addition of paragraph (d) to Phlx Rule 604 to require associated persons to file Form U-4).

<sup>13</sup> Good faith margin is the amount of margin which a creditor would require in exercising sound credit judgment. See 12 CFR 220.2 ("Regulation T").

<sup>14</sup> See 12 CFR 220.7(c) (noting that in a broker-dealer credit account, a creditor may finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors).

<sup>15</sup> According to the Exchange, as of June 30, 1999, the proposal would affect approximately 1,777 persons associated with about 15 firms out of a total of 8,240 firms that have the ability to direct orders to the Phlx by using floor broker members to expedite trades. Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Joseph Morra, Attorney, Division, SEC (July 28, 1999).

<sup>16</sup> See, e.g., Nisonoff Letter, Pozmantier E-mail.

<sup>17</sup> See Nisonoff Letter at 2 and Blackburn Letter.

<sup>18</sup> See Nisonoff Letter at 2.

<sup>19</sup> See *supra* n.10, Nisonoff Telephone Conference.

<sup>20</sup> See Pozmantier E-mail.

<sup>21</sup> See Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Esquire, Division, SEC (June 9, 1999). The Series 55 Exam was developed by the National Association of Securities Dealers, Inc. ("NASD") in response to problems identified in connection with the administrative proceeding against the NASD, *National Association of Securities Dealers, Inc.*, Securities Exchange Act Release No. 37538 (Aug. 8, 1996), 62 S.E.C. Docket 1346 (Order Instituting Public Proceedings Pursuant To Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions). NASD rules generally require a person to have successfully completed the Series 7 Exam before taking the Series 55. See Securities Exchange Act Release No. 39516 (January 2, 1998), 63 FR 1520 (January 9, 1998) (order approving Series 55 Exam).

The Phlx also stated that other SROs such as the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex"), and the Chicago Stock Exchange, Inc. ("CHX") require that securities traders pass the Series 7 Exam.<sup>22</sup> The Phlx noted that an associated person of a Phlx member would be required to take the Series 7 Exam if the firm or that associated person decided to become a member of another SRO.

### III. Discussion

Under Section 19(b) of the Act,<sup>23</sup> the Commission is required to approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO. Under the Act, SROs are assigned rulemaking and enforcement responsibilities for regulating the securities industry for the protection of investors and for related purposes. A key requirement for SROs is to assure that associated persons<sup>24</sup> of their members satisfy prescribed standards of training, experience, and competence as a condition to membership.<sup>25</sup> The Commission finds that the Exchange's proposal requiring those off-floor traders of Phlx members or participant organizations for which the Phlx is the DEA to successfully complete the Series 7 Exam is consistent with the requirements of the Section 6 of Act, and particularly Sections 6(b)(5)<sup>26</sup> and 6(c)(3) (A) and (B)<sup>27</sup> thereunder, for the reasons discussed below.

A review of the Act and its legislative history, as well as subsequent amendments, reveals that one of the Act's most important objectives is to maintain the integrity and competency of securities industry personnel. To this end, Congress has authorized the Commission to comprehensively regulate the securities activities of member firms and their associated persons by, among other things, ensuring that all natural persons associated with a broker-dealer meet such standards of training, experience,

competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.<sup>28</sup> Moreover, Section 15(b)(7)(C) of the Act<sup>29</sup> provides that the Commission may rely on the registered securities associations and national securities exchanges to "require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange." To effectuate the goals of Section 15(b)(7) of the Act,<sup>30</sup> the Commission in 1993 adopted Rule 15b7-1, which prohibits registered broker-dealers from effecting any transaction in, or inducing the purpose or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.<sup>31</sup>

In addition, Section 6(c)(3)(A) of the Act<sup>32</sup> provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if any natural persons associated with such broker or dealer do not meet such standards of training, experience and competence as are prescribed by the rules of the exchange.<sup>33</sup> Also, under Section 6(c)(3)(B) of the Act,<sup>34</sup> a National securities exchange may bar a natural person from becoming associated with a member if the person does not meet the exchange's standards of training, experience, or competence, or if the person has engaged and there is a reasonable likelihood the person will engage again in acts or practices inconsistent with just and equitable principles of trade. Under these statutory provisions, the various national securities exchanges, including the Phlx, are empowered to implement

rules establishing the prerequisites to qualify and approve persons associated with members to engage in securities activities.

The Act's legislative history also demonstrates the strong concerns of Congress regarding the expertise and competency of persons associated with the brokerage industry. One of the primary objectives of Congress in amending the Act in 1964 was "to strengthen the standards of entrance into the securities business, enlarge the scope of self-regulation, and strengthen Commission disciplinary controls over brokers, dealers, and their employees."<sup>35</sup> The Senate Report further noted that "[o]ne of the basic purposes of the Securities Exchange Act of 1934 is to regulate the conduct of broker-dealers and persons associated with them, both through direct Commission controls and through self-regulation by industry groups, with appropriate Commission oversight."<sup>36</sup> The Senate Report emphasized the importance of screening the integrity and competence of those persons involved in the securities industry.<sup>37</sup>

The Commission finds that the Exchange's proposal to require associated persons of members to pass the Series 7 Exam is a well-established and accepted practice in the securities industry and is directly related to one of the most important objectives of the Exchange Act—maintaining the integrity and competency of securities industry personnel.

Off-floor traders of the Phlx are participants in the securities industry. The persons who will be subject to the new rule are associated persons of the member firm.<sup>38</sup> They effect their trading activities in the firm's proprietary account. As associated persons of

<sup>35</sup> S. Rep. No. 379, 88th Cong., 1st Sess. 1 (1963) ("Senate Report").

<sup>36</sup> *Id.* at 38.

<sup>37</sup> The Senate Report noted the following:

The findings of the Special Study show that—because of the complex nature of the securities markets, the reliance which the investing public necessarily places upon the competence and character of professionals in those markets, and the responsibilities which are assumed—the existing ease of entry for inexperienced and unqualified persons subjects the investing public to undue hazards and unnecessarily complicates the task of regulation.

*Id.* at 43–44. In this regard, the national securities exchanges and associations were specifically charged to enhance their regulation of associated persons: "Development and administration of such standards is a matter which is peculiarly appropriate for self-regulation under Commission supervision; and the establishment of such requirements, in conjunction with the requirement of membership in a regulatory body, should significantly simplify regulation and improve investor protection." *Id.* at 44.

<sup>38</sup> See *supra* n. 24.

<sup>22</sup> See NYSE Rule 345; Amex Rule 341; NASD Conduct Rule 1030; CHX Article VI, Rule 3.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> As defined in Section 3(a)(21) of the Act, an associated person of a member is "any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member." 15 U.S.C. 78c(a)(21). The off-floor traders covered by the Exchange's proposed rule change are associated persons of the member firm.

<sup>25</sup> See 15 U.S.C. 78f(c)(3)(B).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78f(c)(3) (A) and (B).

<sup>28</sup> See Section 15(b)(7) of the Act, 15 U.S.C. 78o(b)(7).

<sup>29</sup> 15 U.S.C. 78o(b)(7)(C).

<sup>30</sup> 15 U.S.C. 78o(b)(7).

<sup>31</sup> 17 CFR 240.15b7-1.

<sup>32</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>33</sup> Under Section 15(b)(8) of the Act, all registered brokers or dealers must be members of an SRO—either a securities association or a national securities exchange. 15 U.S.C. 78o(b)(8).

<sup>34</sup> 15 U.S.C. 78f(c)(3)(B).

members of the Phlx, they are required to comply with the Commission's and the Exchange's rules pertaining to broker-dealers and their associated personnel, including qualification requirements established to assure that they maintain the degree of integrity and competency expected of securities industry personnel. The off-floor traders are already subject to registration requirements, including the requirement to file a Form U-4. Requiring these off-floor traders to pass the Series 7 Exam will further the objectives of Sections 6(c)(3) (A) and (B)<sup>39</sup> of the Act, which are intended to assure that associated persons are sufficiently familiar with Commission and SRO requirements and procedures when they are closely connected to the securities industry.

The proper education of securities industry personnel is but one component of a carefully considered statutory and regulatory framework designed to promote the integrity of securities markets and protect investors. According to the Exchange, these off-floor traders generally become members of an LLC to avail themselves of benefits available to associated persons, *e.g.*, Joint Back Office agreements, and not to others. The off-floor traders' benefits of associated person status and the ability to trade in the firm's account also entail obligations under the securities laws. By successfully completing the Series 7 Exam, these off-floor traders should develop a greater understanding of securities products, risks, and regulations appropriate for associated persons.

Moreover, the proposed rule change is consistent with the provisions of Section 6(b)(5)<sup>40</sup> of the Act requiring, 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 and, in general, to protect investors and the public interest. The Series 7 Exam tests for proficiency in a broad range of securities matters, including anti-fraud and anti-manipulation regulation. Without proper training, these associated persons may inadvertently engage in transactions in the firm's account that are improper under the federal securities laws and regulations or rules of the SROs. In the Commission's opinion, the proposed rule revision satisfies the objectives of Section 6(b)(5)<sup>41</sup> of the Act because, by satisfactorily completing the Series 7 Exam, these off-floor traders who trade

on a proprietary basis will gain a greater understanding of the regulations, procedures and principles governing the securities industry.

Most commenters suggested that the Phlx instead should require off-floor traders to pass the Series 55 Exam or another examination specifically tailored to the activities of these off-floor traders, rather than the Series 7 Exam. The Commission believes that, although the Series 7 Exam does not focus on trading off the floor of the Exchange, the exam covers a reasonably broad range of applicable laws, rules, regulations, and industry practices that are pertinent to most associated persons. In essence, the Series 7 Exam is the industry standard for persons who want to be affiliated with a broker-dealer and trade securities. In addition, typically a person must pass the Series 7 Exam to qualify to take the Series 55 Exam, which is a specialized registration category.<sup>42</sup> The Series 55 Exam focuses on activities, automated execution and trading systems, and trade reporting obligations geared toward the Nasdaq market maker.<sup>43</sup> In contrast, the Series 7 Exam is broader in scope, used principally to qualify persons seeking registration as general securities representatives. It tests for appropriate levels of knowledge and expertise regarding securities laws and regulations, characteristics of different investment products, investment risk, and principal factors affecting securities markets and prices for individual securities. The Commission agrees with the Phlx that the Series 7 Exam is the more appropriate test for off-floor traders.

One commenter remarked that the proposal discriminates against off-floor traders because traders on the floor of the Phlx do not have to take the Series 7 Exam. The Commission, however, finds that the proposal does not unfairly discriminate against off-floor traders because traders on the floor of the Exchange must pass the Series 7 Exam, the Series 7A examination,<sup>44</sup> or an options proficiency examination for Registered Options Traders ("ROT") administered by the Phlx Department of

Regulatory Services.<sup>45</sup> Another commenter suggested that the Exchange's proposal would not apply to firms engaged in proprietary trading, even though such firms' employees are routinely permitted to trade large firm proprietary positions far exceeding the position that an LLC member would take using his or her own capital. The Commission finds that the proposal, however, is intended to apply to all off-floor traders of members or participant organizations who trade for the member firm's proprietary account when the Phlx is the DEA, and not just those associated with LLCs.<sup>46</sup> In addition, as noted above, all traders on the floor of the Exchange who trade for the member firm's proprietary account must successfully complete the Series 7 Exam, the Series 7A examination, or a Phlx options proficiency examination, depending on which is applicable.

With respect to one commenter's statement that adequate controls exist to limit any possible impact of trading off the floor of the Exchange, the Commission finds that the proposal will properly supplement existing controls to ensure that off-floor traders and other associated persons of members are appropriately qualified to become associated with a member. By successfully completing the Series 7 Exam, off-floor traders of the Phlx should have a sufficient level of knowledge of securities laws and regulations, as well as investment products and risks, that is suitable to their role as associated persons of a member organization and who trade on a proprietary basis in the firm's account.

In one commenter's view, the proposal is an indirect attempt to regulate credit used by off-floor traders. The Commission does not consider the proposal to be an indirect attempt to impose greater credit restrictions on off-floor traders, but an effort to assure a level of understanding and competency regarding securities matters by

<sup>45</sup> See Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Karl Varner, Attorney, Division, SEC (Aug. 17, 1999). An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade options for his own account. See Phlx Rule 1014(b). See also Phlx Rule 901(c)(1), which specifies that the Exchange may bar a person from becoming associated with a member or condition the association of a person with a member organization if the person does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for.

<sup>46</sup> See Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Karl Varner, Attorney, Division, SEC (Aug. 9, 1999).

<sup>39</sup> 15 U.S.C. 78f(c)(3) (A) and (B).

<sup>40</sup> 15 U.S.C. 78f(b)(5).

<sup>41</sup> *Id.*

<sup>42</sup> Securities Exchange Act Release No. 39516 (January 2, 1998), 63 FR 1520 (January 9, 1998) (order approving Series 55 Examination).

<sup>43</sup> See Letter from Richard S. Rudolph, Counsel, Phlx, to Karl Varner, Esquire, Division, SEC, at pp. 1-2 (June 9, 1999).

<sup>44</sup> See Phlx Rule 604. The Series 7A examination is a module of the Series 7 Exam developed to test the knowledge of the relevant securities laws and Exchange Rules required of a member who conducts a public business that is limited to accepting orders from professional customers for execution on the trading floor.

associated persons of broker-dealers. In fact, the Phlx rule change may benefit a member firm because its off-floor traders will be comprehensively trained and tested on fundamental securities matters.

Finally, the Commission finds that the proposal will bring the Exchange's qualification requirements in line with those of other securities exchanges by adding testing requirements for off-floor traders and other associated persons of members who are not covered by the current qualification requirements for floor traders. The Series 7 Exam was adopted as an industry-wide qualification examination in 1974. In addition to mandating the exam for general securities representatives, other securities exchanges currently require off-floor traders to pass the Series 7 Exam.<sup>47</sup> The Commission notes that other SROs such as the NYSE, Amex, and CHX already require securities traders who do not conduct a public business to pass the Series 7 Exam.<sup>48</sup> For example, NYSE Rule 345 requires "securities traders" engaged in the purchase or sale of securities for the account of their employer and who do not transact business with the public to pass the Series 7 Exam. Amex Rule 341 parallels this rule. In addition, Interpretation and Policy .02 to CHX Rule 3 establishes a Series 7 examination requirement for associated persons who execute, make trading decisions, or otherwise engage in proprietary or agency trading off the floor of the exchange. The examination requirement for off-floor traders at the Phlx will enhance the consistency of exam requirements across the exchanges and prevent off-floor traders from associating with members of the Phlx solely to avoid the examination requirements of other SROs.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 3 conforms the proposal to similar rules of other self regulatory organizations.<sup>49</sup> For these reasons, the Commission finds good

cause for accelerating approval of the proposed rule change, as amended.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR-Phlx-99-07 and should be submitted by September 20, 1999.

#### V. Conclusion

The Commission finds that the proposed rule change is consistent with the Act, and in particular, with Sections 6(b)(5) and 6(c)(3) (A) and (B).<sup>50</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>51</sup> that the proposal, SR-Phlx-99-07, as amended, be and hereby is approved.<sup>52</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>53</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-22426 Filed 8-27-99; 8:45 am]

BILLING CODE 8010-01-M

**ACTION:** Notice of a prototype involving modifications to the disability determination procedures.

**SUMMARY:** The Social Security Administration (SSA) is announcing a prototype involving a combination of modifications to the disability determination process. Before proceeding to national implementation, we expect that this prototype will provide a body of information about what impact these modifications may have on agency operations, notice and other procedures, as well as the resulting quality and timeliness of decisions for the public.

**DATES:** Selection of cases to be included in the prototype will begin on or about October 1, 1999 and is expected to be concluded on or about December 31, 2001. If the Agency decides to continue the prototype beyond this date, another notice will be published in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Harry Pippin, Social Security Administration, Office of Disability, Disability Process Redesign Staff, 6401 Security Boulevard, Baltimore, Maryland, 21235-6401, 410-965-9203.

**SUPPLEMENTARY INFORMATION:** Current rules codified at 20 CFR 404.906 and 416.1406 authorize us to test modifications to the disability determination procedures individually or in any combination. Under this authority, several tests have been conducted. We are now announcing a prototype that incorporates multiple modifications to the disability determination procedures employed by State Disability Determination Services (DDS) which have been shown to be effective in earlier tests. Specifically, the prototype incorporates a series of changes that improve the initial disability determination process by: providing greater decisional authority to the disability examiner and more effective use of the expertise of the medical consultant; ensuring appropriate development and explanation of key issues; increasing opportunities for claimant interaction with the decision maker before a determination is made; and simplifying the appeals process by eliminating the reconsideration step. Focusing initially on 10 states enables us to further refine the process and learn more about potential operational impacts before moving to national implementation. This strategy allows us to put the complete process together and ensure that the changes meet our goal of improved service to disability applicants.

#### SOCIAL SECURITY ADMINISTRATION

#### Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype

**AGENCY:** Social Security Administration.

<sup>50</sup> 15 U.S.C. 78f(b)(5), 15 U.S.C. 78f(c)(3) (A) and (B).

<sup>51</sup> 15 U.S.C. 78s(b)(2).

<sup>52</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>53</sup> 17 CFR 200.30-3(a)(12).

<sup>47</sup> See NYSE Rule 345; Amex Rule 341; NASD Conduct Rule 1030; CHX Article VI, Rule 3. On June 1, 1999, the Pacific Exchange, Inc. ("PCX") filed a similar proposed rule change with the Commission to require that qualified off-floor traders for which the PCX is the designated examining authority successfully complete the Series 7 Exam. See Securities Exchange Act Release No. 41555 (June 24, 1999), 64 FR 36063 (July 2, 1999) (SR-PCX-99-16).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*