

Sep-11	21	6,343,578,147,811	302,075,149,896	-0.227		
Oct-11	21	6,163,272,963,688	293,489,188,747	-0.029		
Nov-11	21	5,493,906,473,584	261,614,593,980	-0.115		
Dec-11	21	5,017,867,255,600	238,946,059,790	-0.091		
Jan-12	20	4,726,522,206,487	236,326,110,324	-0.011		
Feb-12	20				239,879,615,120	4,797,592,302,406
Mar-12	22				243,486,551,999	5,356,704,143,984
Apr-12	20				247,147,724,390	4,942,954,487,796
May-12	22				250,863,947,801	5,519,006,851,628
Jun-12	21				254,636,050,005	5,347,357,050,113
Jul-12	21				258,464,871,221	5,427,762,295,633
Aug-12	23				262,351,264,299	6,034,079,078,884
Sep-12	19				266,296,094,918	5,059,625,803,434

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66506; File No. SR-CME-2012-01]

### Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Order Approving Proposed Rule Change To Amend Rules Relating to Credit Default Swap Guaranty Fund

March 2, 2012

#### I. Introduction

On January 23, 2012, Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-CME-2012-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on February 1, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The rule change would replace CME's "aggregate performance bond requirement" standard, which determines how CME calculates each CDS Clearing Member's allocation to the CDS Guaranty Fund, with a new standard that CME believes better allocates tail risk. Currently CME rules provide that each CDS Clearing

Member's allocation to the CDS Guaranty Fund will be the greater of (i) \$50,000,000 and (ii) its proportionate share of the 90-day trailing average of its aggregate performance bond requirements and average gross notional open interest outstanding at the Clearing House. The proposal would change the CDS Guaranty Fund so that the allocation will be made on the basis of each CDS Clearing Member's potential residual loss ("PRL"). PRL is a stress test of the tail risk CDS Clearing Member portfolios bring to the market. CME is also proposing to make conforming changes to its CDS Manual of Operations.

#### III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>4</sup> In particular, Section 17A(b)(3)(F)<sup>5</sup> of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

The proposed rule change would allow CME to change the method used for calculating individual CDS Clearing Member contributions to the CDS Guaranty Fund and is designed to more accurately align the allocation of its CDS Guaranty Fund requirement to CDS Clearing Members based on the risk presented by each such member. Thus, the proposed rule change to change CME's CDS Guaranty Fund allocation is consistent with the requirement in Section 17A(b)(3)(F) that CME safeguard the securities and funds which are in the custody or control of CME or for which it is responsible.

<sup>4</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2)<sup>6</sup> of the Act, that the proposed rule change (File No. SR-CME-2012-01) be, and hereby is, approved.<sup>7</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-5513 Filed 3-6-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66497; File No. SR-Phlx-2012-23]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Amend Registration and Qualification Requirements

March 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 16, 2012, NASDAQ OMX PHLX LLC ("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 Exchange. The

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</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.

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

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

<sup>3</sup> Securities Exchange Act Release No. 34-66250 (January 26, 2012), 77 FR 5070 (February 1, 2012). In its filing with the Commission, CME included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

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 Exchange proposes to delete Rule 604 as well as amend and adopt several new rules governing the registration and qualification of members and persons associated with <sup>3</sup> member organizations, as described below. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### **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 Exchange 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 the places specified in Item IV below. The Exchange 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 strengthen the Exchange's current registration provisions in a number of ways. In 2010,<sup>4</sup> in connection with the Exchange's proposal to launch the Exchange's equity trading platform

for NMS Stocks, NASDAQ OMX PSX ("PSX"),<sup>5</sup> the Exchange amended Rule 604 to adopt paragraph (h) to govern the registration of representatives and Supplementary Material .04 to Rule 604 regarding the specific category of such registration. In addition, with respect to principal registration, the Exchange adopted paragraph (g), Principal Registration, and Supplementary Material .01–.03 governing the specific categories of principal registration, to require that every member organization covered by those rules have at least two registered principals as well as a Financial/Operations Principal. The Exchange also adopted paragraph (i) to establish which persons are exempt from registration. These provisions became applicable only to PSX users pursuant to paragraph (f). In that filing, the Exchange stated:

"The Exchange intends to separately revise its registration and qualification rules related to activity other than business conducted on PSX, including its options business. The Exchange understands that other self-regulatory organizations are expected to adopt a framework that requires more fulsome registration and qualification requirements clearly spelled out in rules. The Exchange supports the Commission's commitment to ensure that such rules are adopted by all self-regulatory organizations on a consistent basis."

Accordingly, the Exchange is now proposing to extend the principal and representative registration requirements of Rule 604(g) and (h) to all members, member organizations and associated persons by adopting Rules 611–616 to replace Rule 604. As a result of the new registration requirements, additional persons will become subject to the Exchange's continuing education requirement in Rule 640.

#### **Background and Current Requirements**

Currently, Rules 604(a)–(e) apply to all member organizations and generally

require the Series 7 examination for Registered Representatives,<sup>6</sup> off-floor traders<sup>7</sup> and persons compensated directly or indirectly for the solicitation or handling of business in securities who are not otherwise required to register with the Exchange by Rule 604(a).<sup>8</sup> Furthermore, Rule 604(f) provides that members and persons associated with member organizations that are registered with the Exchange for the purpose of trading NMS Stocks<sup>9</sup> through the facilities of the Exchange, which is the PSX platform, are subject to the provisions of Rule 604(g) and (h) governing principal and representative registration, respectively. Thus, these provisions currently cover members that trade on PSX, and are substantially similar to the rules of The NASDAQ Stock Market LLC ("NASDAQ"), Financial Industry Regulatory Authority ("FINRA") and NASDAQ OMX BX, Inc. ("BX") requiring PSX users to register and qualify representatives and principals with the Exchange in accordance with such rules.

#### **Proposal**

The Exchange is proposing to extend the current principal requirement beyond PSX users to include all member organizations, including those who trade options. This more extensive principal requirement will be embodied in new Rules 611 and 612, which are substantially similar to current Rule 604(g) and Supplementary Material .01–.03.

In connection with strengthening its registration rules, the Exchange is proposing to reorganize and renumber its registration rules to better align with those of NASDAQ and FINRA, albeit within its own rule numbering structure. The following summarizes the new rule numbering structure:

Current phlx rule #	Topic	New phlx rule #	NASDAQ
604(g) .....	Principal Registration .....	611	1021
604.01–.03 .....	Categories of Principal Registration .....	612	1022
604(h) .....	Representative Registration .....	613	1031
604.04 .....	Categories of Representative Registration .....	613	1032
604(i) .....	Persons Exempt from Registration .....	614	1060
604(j) .....	Waiver .....	615	1070(d)
None .....	Electronic Filing .....	616	1140

<sup>3</sup> The term "associated person" or "person associated with" a member organization means any partner, officer, director, or branch manager of an Exchange member organization or applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member organization or applicant, or any employee of such member or

applicant, except that any person associated with a member organization or applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Exchange Rules. See Rule 1(b).

<sup>4</sup> See Securities Exchange Act Release No. 62776 (August 26, 2010), 75 FR 53727 (September 1, 2010) (SR-Phlx-2010-91).

<sup>5</sup> See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-79).

<sup>6</sup> See Rule 604(a).

<sup>7</sup> See Rule 604(e).

<sup>8</sup> See Rule 604(d).

<sup>9</sup> See Rule 1(t).

### Representative Registration

Rule 604(h) currently governs the registration of representatives<sup>10</sup> with the Exchange; specifically, Rule 604(h)(1) requires that all persons engaged or to be engaged in the investment banking or securities business<sup>11</sup> of a member organization who are to function as representatives shall be registered as such with the Exchange through WebCRD<sup>12</sup> in the category of registration appropriate to the function to be performed as specified in Supplementary Material .04 of Rule 604. Before their registration can become effective, they shall pass the Series 7 examination. Rule 604(h) is applicable today only to PSX users pursuant to Rule 604(f).

The provisions currently contained in Rule 604(h) are proposed to be moved to new Rule 613, Representative Registration, in substantially the same form, except with respect to trading floor personnel subject to Rule 620. Specifically, new Rule 613(a) will expressly state that, except members whose activities are limited to the Exchange's options trading floor and who are registered pursuant to Rule 620(a) as well as associated persons whose activities are limited to the Exchange's options trading floor and are registered pursuant to Rule 620(b), all persons engaged or to be engaged in the investment banking or securities business of a member organization who are to function as representatives shall be registered as such with the Exchange through WebCRD in the category of registration appropriate to the function to be performed as specified in Rule 613(e). This is the only change to the language currently in Rule 604(h) that is being moved to new Rule 613.

<sup>10</sup> The term "representative" is defined in Rule 1 as a member or an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member organization including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions. To the extent provided in Rule 604, all representatives are required to be registered with the Exchange, and representatives that are so registered are referred to herein as "Registered Representatives." See Rule 1(cc).

<sup>11</sup> The term "investment banking or securities business" means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others. See Rule 1(m). Of course, the federal securities laws may require broker-dealers to become members of the FINRA in order to perform some of these functions. See e.g., 15 U.S.C. 78o(b)(8).

<sup>12</sup> WebCRD is FINRA's automated Central Registration Depository.

Accordingly, trading floor personnel will continue to be required to register pursuant to Rule 620, in lieu of new Rule 613,<sup>13</sup> such that trading floor personnel will not be required to successfully complete the Series 7 examination, as long as their activities are limited to the trading floor. The Exchange believes that it is appropriate to permit trading floor members and associated persons to operate pursuant to a registration and qualification framework tailored to their specific functions. These functions include handling and executing electronic and phoned-in orders on the trading floor, as well as providing markets, both verbally and electronically. Members on the trading floor will continue to be subject to the Exchange's Trading Floor Qualification Examination in lieu of the Series 7, which the Exchange believes is appropriate because the examination focuses on the rules and procedures most applicable to floor members.<sup>14</sup> For example, there are questions regarding the quoting obligations of Rule 1014(b), crossing orders pursuant to Rule 1064, and Floor Broker obligations in Rule 1063.

Respecting trading floor members, Rule 620 requires registration on Form U4 through WebCRD. Rule 620 will now require all trading floor personnel, including clerks, interns and any other associated persons, of a member organization not required to register pursuant to Rule 620(a) to register on Form U4 through WebCRD. Accordingly, the same registration information will be available electronically within WebCRD for trading floor members and associated persons as is available for persons registered as General Securities Representatives.

In terms of the actual category of registration that applies, currently, Supplementary Material .04 to Rule 604, titled Categories of Representative Registration—General Securities Representative, contains the basic requirement<sup>15</sup> that each member and each person associated with a member organization who is included within the definition of a representative in Rule 1(cc) is required to register with the Exchange as a General Securities Representative and shall pass the Series 7 examination before such registration may become effective. The appropriate

<sup>13</sup> However, trading floor personnel and members on the trading floor will be subject to new principal registration requirements, as described below.

<sup>14</sup> The Exchange recently revised this examination. See Securities Exchange Act Release No. 63603 (December 22, 2010), 75 FR 82419 (December 30, 2010) (SR-Phlx-2010-180).

<sup>15</sup> This provision is the same as BX Rule 1032.

registration category on WebCRD is "GS." This provision is not changing, and was intended to capture traditional securities personnel in a rule similar to that of several other SROs.<sup>16</sup> The Exchange continues to believe that this provision is broad and should not generate gaps that permit a member organization to operate differently than under the registration rules of BX, NASDAQ or FINRA. The Exchange proposes to move the provisions of Rule 604(h) into Rule 613 and Supplementary Material .04 of Rule 604 into Rule 613(e). The Exchange believes that it is clearer to place the "registered representative" requirement and category of registration all in one rule, even though that differs from the FINRA and NASDAQ rules slightly.

The Exchange also proposes to adopt a new limited category of representative registration as Rule 613(f). The Exchange has been working with other exchanges and FINRA to develop a registration category and qualification examination for proprietary traders in lieu of the Series 7, which is now available through WebCRD. Accordingly, the Exchange proposes to recognize the new registration category, Proprietary Trader, and related examination, the Series 56,<sup>17</sup> and to incorporate it into Rule 613(f), subject to filing the Series 56 content outline with the Commission.<sup>18</sup> The Exchange intends to file the Series 56 content outline with the Commission shortly.<sup>19</sup> Proposed Rule 613(f) would provide that members and associated persons engaged solely in proprietary trading, market making or effecting transactions on behalf of a broker-dealer account may register instead as a Proprietary Trader and pass the Series 56 examination.<sup>20</sup> The term "persons engaged in effecting transactions on behalf of a broker-dealer account" is equivalent to persons engaged in proprietary trading or market making, because it covers persons who do not deal with the public. For example, this would include both Floor Brokers on the Exchange's trading floor as well as persons performing brokerage functions

<sup>16</sup> See e.g., BX Rules 1031 and 1032, NASDAQ rules 1031 and 1032, and NASD Rules 1031 AND 1031.

<sup>17</sup> This new examination, the Series 56, would also serve as a prerequisite for a new principal registration category, which the Exchange would recognize; the Series 24 would be the appropriate examination for the new principal registration category, as described below.

<sup>18</sup> See e.g., Securities Exchange Act Release No. 64699 (June 17, 2011) (SR-CBOE-2011-056).

<sup>19</sup> The Exchange is also proposing that the Series 56 serve as a prerequisite to the Series 24, as described further below.

<sup>20</sup> See *supra* note 17.

off the trading floor (“upstairs”).<sup>21</sup> The Exchange believes that the Series 56 helps ensure that such persons are qualified, because it addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for individuals required to register as a Proprietary Trader.

The Exchange is proposing to delete Rule 604 in its entirety.<sup>22</sup> With respect to paragraphs (a), (d) and (e), the Exchange believes that the requirements of new Rule 613 cover every person subject to registration as a representative and the Series 7 examination. The Exchange believes that Rule 613 is broader, because it is not limited to member organizations for which the Exchange is the designated examining authority (“DEA”) nor is it limited to specific categories of persons, such as Rule 604(e). In addition, the language of Rule 613 more closely aligns with the rules of FINRA and NASDAQ, which should facilitate compliance by broker-dealers. Thus, although Rule 604 is being deleted, the same persons will continue to be required to successfully complete the Series 7 examination and be registered as a “Registered Representative” on Form U4 through WebCRD. This proposal will extend the requirements of Rule 604(h) to all member organizations, whereas today Rule 604(h) only applies to member organizations registered to use PSX.<sup>23</sup>

#### *Principal Registration*

With respect to principal registration on the Exchange, Rule 604(g)<sup>24</sup> currently provides that certain member organizations must register at least two principals with the Exchange,<sup>25</sup> unless an exception applies. The Exchange is proposing to adopt new Rule 611, Principal Registration, and to move the provisions of existing Rule 604(g) over into this new rule. Accordingly, the principal registration rules will now

apply beyond PSX users to all Phlx member organizations, with the addition of two new registration categories to satisfy the principal requirement: Registered Options Principal and Proprietary Trader Principal.

Phlx rules will require that each principal must successfully complete the General Securities Principal Examination (“Series 24”) and submit a Form U4 via WebCRD reflecting registration as such, using the category “GP,” unless a different category of principal registration applies to such person. Specifically, new Rule 611 will provide that all persons engaged or to be engaged in the investment banking or securities business of a member organization who are to function as principals shall be registered as such with the Exchange through WebCRD in the category of registration appropriate to the function to be performed as specified in Rule 612, Categories of Principal Registration, which replaces existing Supplementary Material .01–.03 of Rule 604. Before their registration can become effective, they shall pass a qualification examination for principals appropriate to the category of registration. Persons associated with a member organization who are actively engaged in the management of the member organization’s investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member organization for any of these functions are principals. Such persons shall include: sole proprietors, officers, partners, managers of offices of supervisory jurisdiction,<sup>26</sup> and directors of corporations. This requirement will now appear in Rule 611(b) and apply to all member organizations.

Rule 604(g)(5) currently requires at least two registered principals, which

will now be contained in new Rule 611(e).<sup>27</sup> Specifically, an Exchange member organization, except a sole proprietorship, shall have at least two officers or partners who are registered as principals with respect to each aspect of the member organization’s investment banking and securities business pursuant to the applicable provisions of Rule 611; provided, however, that a proprietary trading firm<sup>28</sup> with 25 or fewer registered representatives shall only be required to have one officer or partner who is registered as a principal. This exception to the two principal requirement is similar to that of several other exchanges and reflects that such firms do not necessitate the same level of supervisory structure as firms who have customers or larger firms. This exception is not changing and will now be in Rule 611(e)(i), applicable to all member organizations.<sup>29</sup>

Rule 611(e)(ii) will provide, like Rule 604(g) currently does, that the Exchange may waive the two principal requirement in situations that indicate conclusively that only one person should be required to register as a principal. This provision is identical to that of several other exchanges, and the Exchange believes that such waiver is appropriate in certain situations, but should be carefully applied; for example, the Exchange may determine to apply this provision to a very small firm, with only a few employees in one location.

To help determine how a person should register as a principal, Supplementary Material .01–.03 to Rule 604 currently enumerates the three categories of principal registration. These categories will now be in new Rule 612. First, Rule 604.01, titled General Securities Principal, provides that each member or person associated with a member organization who is included within the definition of

<sup>21</sup> This provision is the same as the provision in Chicago Board Options Exchange Incorporated (“CBOE”) rules which requires that an individual Permit Holder or associated person who effects transactions on behalf of a broker-dealer account register and pass the Series 56 examination. See CBOE Rule 3.6A, Interpretation and Policy .06.

<sup>22</sup> The Exchange proposes to amend the following additional rules to replace references to Rule 604 with the new applicable rule number: Rule 1(cc), Rule 1090, Rule 3202, Equity Floor Procedure Advice (“EFPA”) A–7 and Options Floor Procedure Advice (“OFPA”) F–34. Rule 3202 will now refer to the applicability of Rules 611–616 to PSX users.

<sup>23</sup> See Rule 604(f).

<sup>24</sup> This rule is similar to NASDAQ Rule 1021, BX Rule 1021 and NASD Rule 1021.

<sup>25</sup> All persons who engage in specified supervisory functions will be registered as principals. All principals are first required to register as and qualify as Representatives.

<sup>26</sup> The Exchange defined the term “office of supervisory jurisdiction” to mean any office of a member organization at which any one or more of the following functions take place: order execution and/or market making; structuring of public offerings or private placements; maintaining custody of customers’ funds and/or securities; final acceptance (approval) of new accounts on behalf of the member organization; review and endorsement of customer orders; final approval of advertising or sales literature for use by persons associated with the member organization, pursuant to Rule 605, except for an office that solely conducts final approval of research reports; or responsibility for supervising the activities of persons associated with the member organization at one or more other branch offices of the member organization. This definition is drawn from NASD Rule 3010. The Exchange is adopting the reference to this term in order to cover these managers in the new principal registration requirement. The Exchange is not, at this time, adopting a comprehensive program with regard to such offices, such as that found in NASD Rule 3010. See proposed Rule 611(b).

<sup>27</sup> All persons who engage in specified supervisory functions must be registered as Principals.

<sup>28</sup> The term “proprietary trading firm” means a member organization or applicant with the following characteristics: (A) The applicant is not required by Section 15(b)(8) of the Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act; (B) all funds used or proposed to be used by the applicant for trading are the applicant’s own capital, traded through the applicant’s own accounts; (C) the applicant does not, and will not have customers; and (D) all Principals and Representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant. See proposed Rule 611(e)(i).

<sup>29</sup> Member organizations operating on the trading floor will be subject to the minimum “two principal” requirement, except to the extent that the “proprietary trading firm” exception permits certain firms to have one principal.

principal, and each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal and shall pass the Series 24 examination before such registration may become effective, unless such person's activities are so limited as to qualify such person for one or more of the limited categories of principal registration specified in Rule 612.<sup>30</sup> The Exchange proposes to move these provisions of Rule 604.01 to new Rule 612(a), also titled General Securities Principal.

The Exchange also proposes to recognize two new principal registration categories. First, the Exchange proposes to adopt Rule 612(d) in order to permit Registered Options Principals to satisfy the principal registration requirements of Rule 611. Specifically, each member or person associated with a member organization who is included within the definition of principal, and each person designated as a Chief Compliance Officer on Schedule A of Form BD of a member organization may register as a Registered Options Principal and successfully complete the Series 4 examination, instead of registering as a General Securities Principal and successfully completing the Series 24 examination, if such person's activities are limited solely to options. Specifically, Rule 612(d) will provide that such person's supervisory responsibilities in the investment banking and securities business must be limited to the options activities of a member organization, that he or she must be registered pursuant to Exchange Rules as a General Securities Representative, that he or she is qualified to be so registered by passing the Series 4 examination, and that he or she shall not be qualified to function in a principal capacity with responsibility over any area of business activity other than the supervision of persons involved exclusively in options activity. The Exchange believes that the Registered Options Principal category is appropriate for a principal whose activities are limited solely to options.<sup>31</sup> The Series 4 examination covers options-related topics, which should help ensure that principals whose activities are limited to options are properly qualified. Furthermore, Rule 1024 currently requires persons who

supervise options sales practice activities to register as a Registered Options Principal; thus, the Exchange believes that some member organizations have already registered certain associated persons in this category, such that these persons could satisfy the new principal registration requirement for applicable firms.

Second, the Exchange proposes to recognize the new Proprietary Trader Principal category as a limited principal category in Rule 612(e). It would apply to persons whose supervisory responsibilities in the investment banking and securities business are limited to the activities of a member organization that involve proprietary trading, market making and effecting transactions on behalf of broker-dealers. It would require that he or she be registered pursuant to Exchange Rules as a Proprietary Trader, be qualified to be so registered by passing the Series 24 examination, and not function in a principal capacity with responsibility over any area of business activity other than proprietary trading, market making and effecting transactions on behalf of broker-dealer accounts.

The Exchange has been working with other exchanges and FINRA to develop this registration category, which is limited to persons who supervise persons engaged in proprietary trading, market making or effecting transactions on behalf of broker-dealer accounts.<sup>32</sup> This category is in lieu of registration as a General Securities Principal, for which the prerequisite qualification examination is the Series 7. The appropriate qualification examination for the proposed new registration category of Proprietary Trader Principal is the Series 24, which is the same qualification required for registration as a General Securities Principal; no new examination has been developed. However, the prerequisite examination for the new Proprietary Trader Principal category is the new Series 56, which is described above. Accordingly, a person who has passed the Series 56 can register as a Proprietary Trader Principal and take the Series 24 examination, under this proposal, but cannot register as a General Securities Principal without first qualifying as a General Securities Representative and passing the Series 7. Thus, although the Series 24 will now be the appropriate qualification examination for both categories (General Securities Principal and Proprietary Trader Principal),

different prerequisites apply and different registration categories result.

The new Proprietary Trader Principal category is expected to become available to Phlx member organizations in WebCRD soon and the Exchange will communicate the implementation date to the membership. The Exchange believes that the new principal registration category is an appropriate corollary to the new representative registration category discussed above and reflects a substantial joint-exchange effort to develop a registration framework specific to principals supervising persons engaged in proprietary trading, market making and effecting transactions on behalf of broker-dealer accounts. Furthermore, the Exchange believes that the Series 24 is the appropriate examination for Proprietary Trader Principals, because it tests knowledge and understanding of supervision-related rules.

Both the Registered Options Principal and the Proprietary Trader Principal registrations count towards the minimum two principal requirement in Rule 611. The Exchange believes that this is appropriate because both of these principals are subject to a comprehensive qualification examination that covers their area of supervision. Of course, if the member organization is involved in activity other than what a Proprietary Trader Principal and a Registered Options Principal are permitted under these rules to supervise, an additional principal would be required.

Two other provisions of the current principal registration framework are also becoming applicable to all member organizations, in addition to the basic principal requirement. Rule 604.02, titled Limited Principal—Financial and Operations, currently requires that each member organization of the Exchange that is subject to Rule 604(g) and that is operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), designate as Limited Principal—Financial and Operations (“FINOP”) those persons associated with it, at least one of whom shall be its chief financial officer, who perform the following duties: final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are involved in the actual maintenance of the member organization's books and records from which such reports are derived; supervision and/or performance of the

<sup>30</sup> However, pursuant to Rule 604.01(c), a person registered solely as a General Securities Principal shall not be qualified to function as a FINOP or a Limited Principal—General Securities Sales Supervisor unless that person is also qualified and registered as such.

<sup>31</sup> This is similar to BATS Exchange, Inc. (“BATS”) Rule 17.1(g).

<sup>32</sup> In effect, supervisors who supervise persons engaged only in activities covered by the proposed new Proprietary Trader registration category can meet the principal registration requirement by registering as a Proprietary Trader Principal.

member organization's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member organization's back office operations; or any other matter involving the financial and operational management of the member organization. Each FINOP must register with the Exchange and pass the Series 27 examination. The Exchange proposes to move this provision to Rule 612(b) and extend it beyond PSX users, including trading floor members. This provision is intended to ensure that persons handling the financial affairs of a firm are properly registered and qualified. This requirement also harmonizes the Exchange's rules with those of other exchanges<sup>33</sup> and recognizes the importance and complexity of the rules governing financial responsibility for broker-dealers.<sup>34</sup> Although the FINOP is a type of principal registration, because its scope is limited to financial matters, the FINOP does not count toward the two principal requirement of Rule 611.

Rule 604.03, Limited Principal—General Securities Sales Supervisor, is also being extended to all member organizations as new Rule 612(c). It currently provides that each person associated with a member organization who is included in the definition of principal in Rule 604(g) (changing to Rule 611) may register with the Exchange as a Limited Principal—General Securities Sales Supervisor, or "SU," if applicable. This provision is being moved, unchanged, in its entirety to new Rule 612(c). Like the FINOP, the General Securities Sales Supervisor does not count toward satisfying the two principal requirement of Rule 611.

In total, although various other supervisory rules currently operate, such as Phlx Rule 748,<sup>35</sup> extending these principal registration requirements beyond Exchange member organizations doing business on PSX should strengthen the framework of supervisory rules. The Exchange believes that the broader application of the principal registration requirement is an important change. The Exchange also believes that offering categories of limited principal registration should help ensure that principals are properly qualified for their specific functions,

such as supervising persons involved in options and proprietary trading.

#### *Other Rules*

The Exchange proposes to renumber Rule 604(i), Persons Exempt from Registration, as new Rule 614. No changes are proposed thereto. These registration exemptions will now apply to all member organizations and are intended to make clear that registration of certain, specific persons is not necessary, because of their functions. This provision is based on exemptions contained in, for example, NASDAQ Rule 1060 and BX Rule 1060.

Rule 604(i)(2) provides that member organizations, and persons associated with a member organization, may pay nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member organizations under certain conditions detailed in the rule. This provision is intended to cover the payment of fees to finders,<sup>36</sup> and is being moved to Rule 614(b), without change.

The Exchange proposes to renumber Rule 604(j) as Rule 615, Waiver of Requirements. Currently, Rule 604(j) provides that the Exchange may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a Qualification Examination. Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a Qualification Examination. The rule is not changing and is based on corresponding rules of FINRA, NASDAQ and BX.

The Exchange proposes to adopt Rule 616, Electronic Filing Requirements for Uniform Forms. Rule 616(a), WebCRD Filing, will provide that forms required to be filed under the Rule 600 Series shall be filed electronically through WebCRD.<sup>37</sup> Currently, some of the rules in the 600 series state this and others do not, such that adopting a separate, new rule should be clearer. Similarly, new Rule 616(b), Form U4 and U5 Filing Requirements, will require that initial filings and amendments of Forms U4 and U5 be submitted electronically. Furthermore, as part of the member organization's recordkeeping

requirements, it shall retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Exchange Act Rule 17a-4, and make such records available promptly upon regulatory request. In addition, every application for registration filed with the Exchange shall be kept current at all times by supplementary amendments via electronic filing or such other process as the Exchange may prescribe. Such amendments shall be filed not later than 30 days after the applicant learns of the facts or circumstances giving rise to the need for the amendment. These requirements also currently may appear in various rules but not each applicable rule, such that adopting a separate, new rule should be clearer.<sup>38</sup>

The Exchange also proposes to amend OFPA F-34 and EFPA A-7, both titled Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD; these are the corollary minor rule plan provisions for Rule 623, which are being amended only to add new rule numbers 611-613 and 616 and to delete reference to Rule 604.

The Exchange proposes to amend Rule 620, Trading Floor Registration, to specifically state the registration categories governed by the rule, to require all trading floor associated persons of member organizations to register via Form U4, to delete unnecessary language and to strengthen a time requirement. Specifically, the Exchange proposes to add to Rule 620(a), which requires the registration of Floor Brokers, Specialists and Registered Options Traders on an Exchange trading floor via Form U4, that the appropriate registration category on such form is "Member Exchange ("ME")" under "PHLX." This is intended to specify registration categories in the Exchange's rules whenever possible, for clarity. The Exchange notes that this provision covers members operating on the trading floor and that such members are required to successfully complete the Exchange's Trading Floor Qualification Examination. The Exchange also proposes to delete a reference in Rule 620(a) to updating Form U4 within a certain time period, because this requirement will now appear in new Rule 616, as explained above.

Currently, Rule 620(b) covers all trading floor personnel, such as clerks, interns, and other associated persons of member organizations, not required to register under Rule 620(a) and requires

<sup>33</sup> See e.g., CBOE Rule 3.6A(b).

<sup>34</sup> See e.g., Phlx Rule 703.

<sup>35</sup> Currently, Rule 748, Supervision, establishes the supervisory requirement for member organizations, including that all locations and activities of a member organization be supervised by a qualified supervisor.

<sup>36</sup> This provision is identical to NASDAQ Rule 1060(b) and BX Rule 1060(b).

<sup>37</sup> This is similar to International Securities Exchange, LLC ("ISE") Rules 313.01 and .02.

<sup>38</sup> This rule is similar to NASDAQ Rule 1031(d)(3).

them to register with the Exchange on a form supplied by the Exchange. The Exchange proposes to significantly strengthen this requirement by requiring these individuals to be registered on Form U4 on WebCRD, not just with the Exchange. Accordingly, these associated persons will be subject to the comprehensive disclosure obligations of Form U4, which the Exchange believes is an important enhancement. For example, once a Form U4 submission is required, the background information of these individuals will be available electronically within WebCRD for access by the appropriate regulators. The specific registration category will be "Floor Employee ("FE")" under "PHLX," which will be stated expressly in the rule. The Exchange does not intend to require a qualification examination for non-member trading floor personnel at this time. The Exchange does not believe that the Series 7, Series 56 or the Exchange's own Trading Floor Qualification Examination are appropriate for the limited functions of a trading floor clerk, because these persons are not members trading on the floor and they are supervised by members. These persons do not execute transactions on the Exchange, but rather enter orders and report trades, for example, and related clerical functions.<sup>39</sup> Specifically, the types of questions covered by the Exchange's Trading Floor Qualification Examination include announcing trades, trade allocation and floor broker responsibilities, all of which are rules that apply to trading floor members, but not clerks or off-floor persons.

The Exchange also proposes to amend Rule 620(b) to provide that following the termination of, or the initiation of a change in the status of any such personnel of a member organization who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a member organization principal, officer, or member of the member organization with authority to do so, and submitted to the appropriate Exchange department no later than 9:30 a.m. the next business day by the member organization employer. The Exchange proposes to strengthen this requirement by adding that such submission should occur, rather than no later than 9:30 a.m. the next business day, as soon as possible but no later than 9:30 a.m. the next business day.

Lastly, the Exchange proposes to amend Rule 623, Fingerprinting, to adopt a new paragraph (b), which is

similar to NASDAQ Rule 1140(d). Upon filing an electronic Form U4 pursuant to Rule 616 on behalf of a person applying for registration, a member shall promptly submit fingerprint information for that person. The Exchange may make a registration effective pending receipt of the fingerprint information. The fingerprinting requirement is not new, but rather is being codified into the appropriate rule.<sup>40</sup>

#### Conclusion

The Exchange believes that these proposed new rules should form a solid framework for the registration and qualification of all member organizations and their personnel. As a result of the new registration requirements, additional persons will become subject to the Exchange's continuing education requirement in Rule 640. The Exchange will announce to the membership when these new requirements will be implemented and available for member organizations to access.

The Exchange proposes to require that member organizations comply with the new registration and qualification requirements within 90 days of the Exchange's issuance of an alert to its membership, announcing Commission approval; respecting any registration category and related examination that has a prerequisite, the Exchange proposes to require its member organizations to comply therewith 90 days after successful completion of the prerequisite exam.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>41</sup> in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,<sup>42</sup> pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,<sup>43</sup> in that it is designed, among other things, 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, by extending its registration and qualification requirements beyond PSX users. Overall, as discussed in more

detail above, the Exchange believes that these new requirements bolster the integrity of the Exchange by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators.

#### 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 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

Within 45 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 Exchange consents, the Commission shall: (a) By order approve or disapprove 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. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-23 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2012-23. This file number should be included on the

<sup>40</sup> OFPA F-25 and EFPA A-4 are the corollary minor rule plan provisions for Rule 623; these are not changing.

<sup>41</sup> 15 U.S.C. 78f(b).

<sup>42</sup> 15 U.S.C. 78(c)(3)(B).

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> See Rule 1090.



subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2012-23 and should be submitted on or before March 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-5555 Filed 3-6-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66503; File No. SR-CHX-2012-02]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Add to and Amend Its Rules Regarding the Obligations of Institutional Brokers Registered With the Exchange

March 1, 2012.

#### I. Introduction

On January 6, 2012, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to permit broker-dealers registered as Institutional Brokers with CHX to operate a non-Institutional Broker unit within the same Participant Firm. The proposed rule change was published for comment in the **Federal Register** on January 24, 2012.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Institutional Brokers are an elective sub-category of Exchange Participants who are subject to the obligations of Article 17 of the CHX rules. Registration as an Institutional Broker is limited to Participant Firms, and is not available to individual persons.<sup>4</sup> Under current CHX rules, each individual person authorized to enter bids and offers and execute transactions on behalf of an Institutional Broker is considered an Institutional Broker Representative ("IBR") and must be registered with the Exchange as provided in Article 6.

Institutional Brokers are the successors to the floor brokers that operated within the Exchange's previous floor-based, auction trading model. The Exchange replaced its floor-based, auction trading model with its New Trading Model, which features an electronic limit order matching system as its core trading facility ("Matching System"), beginning in late 2006.<sup>5</sup> Under CHX's New Trading Model, Institutional Brokers were regarded as operating on the Exchange.<sup>6</sup> Recently, the Exchange amended its rules to provide that Institutional Brokers are no longer considered to be operating on the Exchange.<sup>7</sup> Given this change in the status of Institutional Brokers, the Exchange stated that the instant proposal is designed to enable Institutional Brokers to engage in business activities beyond those handled by IBRs, such as over-the-counter ("OTC") market making, while ensuring that their activities as an Institutional Broker are appropriately governed by CHX rules.

The Exchange proposed to permit Institutional Brokers to operate a non-

Institutional Broker unit within the same Participant Firm. A firm registered with the Exchange as Institutional Broker could maintain other lines of business separate and distinct from its Institutional Broker activities without subjecting those other areas to the requirements of Article 17, Rule 3 contingent upon the creation and maintenance of effective information barrier procedures as specified in proposed Rule 6 of Article 17. The Exchange stated that non-IBR activities of a Participant Firm registered as an Institutional Broker would remain subject to all other applicable provisions of the Exchange's rules.<sup>8</sup> The non-IBR personnel at an Institutional Broker could continue to send orders to the Exchange, but those orders would be regarded as standard order-sending Participant orders, not as Institutional Broker activity. The Exchange stated that it can and will distinguish between orders sent to the Matching System by IBRs and other orders sent by Institutional Brokers to the Matching System for billing and other purposes.<sup>9</sup>

CHX proposed to modify its rules correspondingly to redefine IBR<sup>10</sup> and "Participant Firm,"<sup>11</sup> and amend the obligations of Institutional Brokers and IBRs.<sup>12</sup> Certain Institutional Broker privileges and responsibilities would apply only to the activities of those individuals registered with the Exchange as IBRs (and clerks thereto).<sup>13</sup> Further, the Exchange proposed to

<sup>8</sup> See Notice, 77 FR at 3529.

<sup>9</sup> See *id.*

<sup>10</sup> See Article 1, new Rule 1(gg) (defining IBR). See also amended Interpretation and Policy .02 to Article 17, Rule 1 (redefining IBR as an individual person affiliated with an Institutional Broker who is authorized to accept orders, enter bids and offers and execute transactions on behalf of an Institutional Broker and who has registered with the Exchange as an IBR as provided in Article 6).

<sup>11</sup> See Article 17, revised Rule 2 (clarifying that only Participants Firms are eligible to register as Institutional Brokers).

<sup>12</sup> See Article 17, Rule 3(e) (the obligations owed by Institutional Brokers under Article 11 include the affirmative obligation to provide electronic information to the Exchange in certain circumstances); Interpretation and Policy .01(a) to Article 6, Rule 3 (all applicants seeking to register as IBRs must successfully complete an Institutional Broker exam).

<sup>13</sup> See amended Article 17, Rule 3 (enumerated Institutional Broker responsibilities apply to activities by or through an affiliated IRR); amended Article 17, Rule 5(a) (the ability to make clearing submissions is limited to IBRs); new Article 17, Rule 6 (creating a duty of Institutional Brokers with a non-Institutional Broker unit to establish and maintain information barriers between the Institutional Broker unit and non-Institutional Broker unit); amended Article 17, Rule 1 (only registered IBRs are permitted to use Exchange systems provided for Institutional Brokers for handling orders and reporting transactions, *i.e.*, Brokerplex®). For a description of Brokerplex®, see Notice, 77 FR at 3528, n.9.

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

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

<sup>3</sup> Securities Exchange Act Release No. 66177 (January 18, 2012), 77 FR 3527 ("Notice").

<sup>4</sup> See CHX Rules, Article 17, Rule 1, Interpretation and Policy .02.

<sup>5</sup> See Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR-CHX-2006-05).

<sup>6</sup> See *id.*

<sup>7</sup> See Securities Exchange Act Release No. 65633 (October 26, 2011), 76 FR 67509 (November 1, 2011) (SR-CHX-2011-29).

<sup>44</sup> 17 CFR 200.30-3(a)(12).