

MEMORANDUM

To: All Members, Member Organizations and Foreign Currency Option
Participant Organizations

From: Examinations Department

Re: Annual Audit Requirement: Exchange Act Rule 17a-5(d)

Date: February 1, 2002

Firms not meeting an exemption from Exchange Act Rule 17a-5(d) that report on a calendar year basis are reminded of the requirement to file an annual audit with their Designated Examining Authority (“DEA”) no later than March 1, 2002. The full text of Membership Memorandum 2130-01, issued on November 30, 2001, which addressed the filing requirements and exemptions for Phlx DEA’d firms, is reprinted below for your convenience. Annual Audits filed with the Phlx should be directed to the Examinations Department.

Any questions regarding the filing of Annual Audits should be directed to Joe Cusick, Vice President Examinations Department at 215-496-1576.

Text of Phlx Memorandum No. 2130-01

Pursuant to Rule 17a-5(d), promulgated under the Securities Exchange Act of 1934 (“the Act”), all broker-dealers are required to file annually audited financial statements (“Annual Audit”) with their Designated Examining Authority, and the Securities and Exchange Commission (“SEC”), no more than 60 days after the date of the year end financial statements. Member firms designated to the Philadelphia Stock Exchange (“Phlx” or “Exchange”) are reminded to file their Annual Audit with the Exchange’s Examinations Department on a timely basis. Member firms requiring an extension must make a request, in writing, prior to the filing due date. Additionally, member firms are reminded of the requirement that they engage an independent and certified public accountant that is duly registered in good standing under the laws of the accountant’s home state.

Exemption from Annual Audit Requirement

Pursuant to subsection (1)(iii) of Rule 17a-5(d) of the Act, broker-dealers that are members of a national securities exchange and have transacted a business in securities

solely with or for other members of a national securities exchange and have not carried customer accounts, are exempt from Rule 17a-5(d).

Based on previous discussions between the Phlx and the SEC's Division of Market Regulation, the exemption will apply to a Phlx member firm that operates primarily as an on-floor specialist, market maker or a floor broker and executes 75% or more of its transactions directly relating to its primary business on the floor of the Exchange.

Therefore, member firms conducting 25% or more of their total transactions at any time, which are not directly related to its primary business as on-floor specialist, market maker or floor broker will be required to engage an independent public accountant and file an Annual Audit pursuant to Rule 17a-5. Transactions not directly related to a primary business on the floor include, but are not limited to: transactions occurring in a customer or investment account; proprietary trading and margin transactions resulting in the application of Regulation T.

Member firms claiming an exemption from Rule 17a-5(d) are reminded of the obligation to maintain evidence supporting their qualification for the exemption. During routine examinations the Examinations Department staff will review compliance with Rule 17a-5(d).

Please direct any questions regarding the Annual Audit requirement to Joseph P. Cusick, Vice President Examinations Department at 215-496-1576.