



## Memorandum

TO: Nasdaq Phlx Trading Floor Member Organizations and personnel

FROM: Dana Rutherford

DATE: July 15, 2024

RE: SEC Adopts Amendments to Exemption From National Securities Association Membership

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As a reminder, Exchange Act Rule 15b9-1 may require a Phlx Trading Floor member or member organization (collectively “member” or “members”) who is not currently registered with FINRA to register with FINRA **before the September 6, 2024 compliance date**. Alternatively, an impacted member may elect to become a member of other exchanges or alter their trading activity to comply with Rule 15b9-1.

### Background

The U.S. Securities and Exchange Commission (“SEC”) adopted rule amendments that narrow the exemption from Section 15(b)(8) of the Securities Exchange Act (“Act”). Section 15(b)(8) requires any broker or dealer registered with the SEC to become a member of the Financial Industry Regulatory authority (“FINRA”) unless it effects transactions in securities solely on an exchange of which it is a member. As adopted, a registered broker or dealer will be required to become a FINRA member if the broker or dealer effects securities transactions other than on an exchange where it is a member, unless:

- It is a member of a national securities exchange,
- It carries no customer accounts, **and**
- Such transactions:
  - result solely from orders that are routed by a national securities exchange of which the broker or dealer is a member to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or
  - are solely for the purpose of executing the stock leg of a stock-option order.

## **Examples**

### **Scenario # 1: Broker Dealer A routes an order to Broker Dealer B who then executes the order on an exchange where Broker Dealer A is member.**

In this scenario, both Broker Dealer A and Broker Dealer B must be members of FINRA or both Broker Dealers must be a member of the exchange on which the transaction ultimately is executed.

### **Scenario # 2: Floor Broker A, who exclusively performs agency business and does not carry accounts of customers, receives an order and then routes that order to Floor Broker B on another exchange for execution.**

In this scenario, both Floor Broker A and Floor Broker B must be members of FINRA or both Floor Brokers must be a member of the exchange on which the transaction ultimately is executed.

For purposes of determining if a broker-dealer is "effecting a transaction" pursuant to Section 15(b)(8) of the Act, a broker-dealer that routes an order to another broker-dealer who receives and executes that order are all considered parties to this transaction who are "effecting" the trade. Therefore, both Broker Dealer A that routes Order 1 to Broker Dealer B who then executes Order 1 are "effecting" Order 1's execution. Both Broker Dealer A and Broker Dealer B must comply with SEC Rule 15b9-1.

As mentioned in a memorandum dated September 21, 2023, members are strongly encouraged to read the [final rule](#) in consultation with their legal counsel and determine if the exemption applies to their trading practices. Specifically, market making firm principals and members engaged in floor brokering activities should make a determination if the exemption applies to each aspect of their firm's business practices.

The operative date for the rule amendments is November 6, 2023 with a grace period for affected broker dealers to join FINRA by September 6, 2024. The press release can be found [here](#).

If you have any questions concerning the above, please contact Dana Rutherford at 215-496-1564.