The Securities and Exchange Commission (“SEC”) adopted rule amendments that narrow the exemption from Section 15(b)(8) of the Securities Exchange Act. Section 15(b)(8) requires any broker or dealer registered with the SEC to become a member of FINRA unless it effects transactions in securities solely on an exchange of which it is a member.

Exchange Act Rule 15b9-1 may require a Phlx Trading Floor member or member organization who is not currently registered with FINRA to register with FINRA before the September 6, 2024 compliance date.

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.

Members and member organizations 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.