

withhold shares of the Company's common stock or purchase shares of the Company's common stock from the Participants to satisfy tax withholding obligations related to the vesting of Restricted Stock and the exercise of options to purchase shares of the Company's common stock granted pursuant to the Plans or the Amended Plans. The Amended Plans further provide the Company's Board with discretion to permit the Participants to pay the exercise price of options to purchase shares of the Company's stock with shares of the Company's stock already held by such Participants or pursuant to net share settlement.

#### Applicant's Legal Analysis

1. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers or under other circumstances as the Commission may permit to ensure that the purchase is made on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that the withholding or purchase of shares of Restricted Stock and common stock in payment of applicable withholding tax obligations or of common stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

2. Section 23(c)(3) provides that the Commission may issue an order that would permit a BDC to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that it believes that the requested relief meets the standards of section 23(c)(3).

3. Applicant states that these purchases will be made on a basis which does not unfairly discriminate against the stockholders of the Company because all purchases of the Company's stock will be at the closing price of the common stock on the NASDAQ Global Select Market (or any other such exchange on which the shares may be traded in the future) on the date of the transaction. Applicant further states that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving the Company's shares. Applicant submits that because all transactions would take place at the

public market price for the Company's common stock, the transactions would not be significantly different than could be achieved by any stockholder selling in a market transaction.

4. Applicants submit that the proposed purchases do not raise concerns about preferential treatment of the Company's insiders because the Amended Plans are bona fide compensation plans of the type that is common among corporations generally. Further, the vesting schedule is determined at the time of the initial grant of the Restricted Stock and the option exercise price is determined at the time of the initial grant of the options. Applicant represents that all purchases may be made only as permitted by the Amended Plans. Applicant argues that granting the requested relief would be consistent with policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission for relief under section 23(c) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 3, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 3, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

A regulatory matter regarding a financial institution; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: May 27, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-13329 Filed 5-28-10; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62183, File No. SR-MSRB-2009-10]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA®)

May 26, 2010.

#### I. Introduction

On July 14, 2009, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to additional voluntary submissions by issuers to the MSRB's Electronic Municipal Market Access System ("EMMA"). The proposed rule change was published for comment in the **Federal Register** on July 22, 2009.<sup>3</sup> The Commission received 27 comment

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60315 (July 15, 2009), 74 FR 36294 ("Original Notice") (the "original proposed rule change").