

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2010-124 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-NYSEAmex-2010-124. This file number should be included on the subject line if e-mail 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-NYSEAmex-2010-124 and should be submitted on or before January 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63599; File No. SR-MSRB-2010-16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Amendments to Rule G-5, on Disciplinary Actions by Appropriate Regulatory Agencies, Remedial Notices by Registered Securities Associations; and Rule G-17, on Conduct of Municipal Securities Activities

December 22, 2010.

I. Introduction

On November 1, 2010, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change which consists of amendments to Rule G-5, on disciplinary actions by appropriate regulatory agencies, and Rule G-17, the Board's basic fair practice rule, to apply the rules to municipal advisors. The proposed rule change was published for comment in the **Federal Register** on November 18, 2010.³ The Commission received one comment letter about the proposed rule change which supported the proposed rule change.⁴

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Rule G-5 currently provides that brokers, dealers, and municipal securities dealers ("dealers") may not engage in municipal securities activities in contravention of restrictions imposed on them by the Commission, a registered securities association, or another appropriate regulatory agency. The purpose of the portion of the proposed rule change consisting of amendments to Rule G-5 are a) to remove a reference to an outdated National Association of Securities Dealers ("NASD")⁵ rule and b) to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63309 (November 12, 2010), 75 FR 70756 (the "Commission's Notice").

⁴ See letter from the National Association of Independent Public Finance Advisors, dated December 9, 2010.

⁵ In 2007, the NASD merged with the New York Stock Exchange's regulation committee to form the Financial Industry Regulatory Authority, or FINRA. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007).

provide that municipal advisors and their associated persons may not engage in the municipal advisory activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act in contravention of restrictions imposed upon them by the Commission.

Rule G-17 currently provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. The purpose of the portion of the proposed rule change consisting of amendments to Rule G-17 is to apply the MSRB's core fair dealing rule to municipal advisors in the same manner that it currently applies to dealers.

A more complete description of the proposal is contained in the Commission's Notice.

The proposed rule change shall be effective upon Commission approval.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB⁶ and, in particular, the requirements of Section 15B(b)(2) of the Exchange Act⁷ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons and the public interest.⁸ Section 15B(b)(2)(L) of the Exchange Act requires, among other things, that the rules of the MSRB not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-4(b)(2).

⁸ 15 U.S.C. 78o-4(b)(2)(C).

²¹ 17 CFR 200.30-3(a)(12).

persons, provided that there is robust protection of investors against fraud.⁹

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, because it provides that: (i) municipal advisors shall deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice and (ii) municipal advisors and their associated persons shall not conduct municipal advisory activities in contravention of restrictions imposed upon them by the Commission. Such restrictions are, amongst other things, consistent with Section 15B(b)(2)(C) of the Exchange Act because they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The Commission further believes that the proposed rule change is consistent with Section 15B(b)(2)(L) of the Exchange Act because the proposed rule change does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and the proposed rule change is necessary for the robust protection of investors against fraud as well as the protection of municipal entities and obligated persons. Many municipal advisors play a key role in the structuring of offerings of municipal securities and the preparation of offering documents used to market those securities to investors. In some cases, they advise on the appropriateness of municipal financial products, including municipal derivatives, entered into by municipal entities, the effectiveness of which may have a substantial impact on the finances of those municipal entities. In other cases, they solicit municipal entities and obligated persons for investment advisory business with respect to funds held by or on behalf of such municipal entity or obligated person which, if not conducted according to the highest standards, may have a substantial effect on the finances of the municipal entities and obligated persons that control those funds. Investors, therefore, have a substantial interest in municipal advisors conducting their municipal advisory activities fairly, not engaging in fraudulent conduct, and not engaging in municipal advisory activities contrary to disciplinary actions imposed by the Commission.

The proposal will become effective upon Commission approval.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹⁰

that the proposed rule change (SR–MSRB–2010–16), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32732 Filed 12–28–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63595; File No. SR–Phlx–2010–179]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Cancellation Fee

December 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 16, 2010, NASDAQ OMX PHLX, Inc. (“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 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 amend its Fee Schedule to eliminate the Cancellation Fee for electronically delivered customer orders from Section II, Equity Options Fees, of the Fee Schedule.

While changes to the Exchange’s Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades occurring on and after January 3, 2011.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹¹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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 amend the Exchange’s Fee Schedule, specifically Section II, Equity Options Fees, to eliminate the Cancellation Fee for electronically delivered customer orders.

Currently, the Exchange assesses a Cancellation Fee on electronically delivered Customer order for symbols other than the select symbols in Section I of the Fee Schedule³ and Professional All-or-None (“AON”) orders that are submitted by a member. The Exchange assesses \$2.10 per order for each cancelled electronically delivered customer order and \$1.10 per order for each cancelled electronically delivered AON order submitted by a Professional in excess of the number of AON orders submitted by a Professional executed on the Exchange by a member organization in a given month.⁴ A Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered customer or AON orders submitted by a Professional, respectively, are cancelled.⁵

The Exchange is proposing to amend the Cancellation Fee in Section II so that the Cancellation Fee would not apply to

³ Section I of the Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols contains a list of symbols which apply to Section I of the Fee Schedule (“Select Symbols”).

⁴ All customer or AON orders submitted by a Professional from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period are aggregated and counted as one executed customer or AON option order submitted by a Professional.

⁵ A Cancellation Fee does not apply to pre-market cancellations, Complex Orders that are submitted electronically, unexecuted Immediate-or-Cancel (“IOC”) customer orders or cancelled customer orders that improved the Exchange’s prevailing bid or offer (“PBBO”) market at the time the customer orders were received by the Exchange.

⁹ 15 U.S.C. 78o–4(b)(2)(L).

¹⁰ 15 U.S.C. 78s(b)(2).