Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 24, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21085 Filed 9–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87075; File No. SR–MSRB–2019–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MSRB Rule A–11, on Assessments for Municipal Advisor Professionals, To Increase the Annual Professional Fee Over a Two-Year Phase-In Period

September 24, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 11, 2019 the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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 MSRB filed with the Commission a proposed rule change to amend MSRB Rule A–11, on assessments for municipal advisor professionals, to increase the annual professional fee over a two-year phase-in period from $500 to $1,000 (the ''Revised Professional Fee'') for each person associated with the municipal advisor who is qualified as a municipal advisor representative in accordance with MSRB Rule G–3 and for whom the municipal advisor has a Form MA–I [3] on file with the Commission (each a ''covered representative'') and to make other technical changes (the ''proposed rule change''). The phase-in period of the Revised Professional Fee will operate as follows: [4]

- MSRB fiscal year 2020 [5] will be year one of the phase-in period, with municipal advisors being assessed $750 for each covered representative as of January 31, 2020. The payment of $750 per such covered representative will be due by April 30, 2020.
- The Revised Professional fee will be fully phased-in during MSRB fiscal year 2021,[6] with municipal advisors being assessed $1,000 for each covered representative as of January 31 of that fiscal year. The payment of $1,000 per such covered representative will be due by April 30 of that fiscal year.

The MSRB has designated the proposed rule change for immediate effectiveness.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

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 MSRB 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 MSRB 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 adjust the annual municipal advisor professional fee assessed on municipal advisor firms to better defray the costs and expenses of operating and administering the MSRB. In the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act''),[7] Congress charged the Commission and the MSRB with the regulation of municipal advisors and, at the same time, granted the MSRB authority to charge municipal advisors ''reasonable fees and charges'' to defray the overall ''costs and expenses of operating and administering the Board.'' [8] Since the passage of the Dodd-Frank Act, the MSRB has exercised this statutory authority to implement a comprehensive regulatory framework for municipal advisors.[9] In furtherance of this framework, the MSRB adopted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Form MA–I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities,'' is an SEC form that must be completed and filed by a municipal advisor firm with respect to each natural person associated with the firm and engaged in municipal advisory activities on the firm's behalf, including employees of the firm. Independent contractors are included in the definition of ''employee'' for these purposes. The same form is also used to amend a previously submitted Form MA–I. A natural person doing business as a sole proprietor must complete and file Form MA–I in addition to Form MA. *See* ''Instructions for the Form MA Series,'' available at *https://www.sec.gov/about/forms/formmadata.pdf.*

[4] Consistent with the Board's prohibition on charging or otherwise passing through MSRB fees to issuers, municipal advisors are prohibited from charging or otherwise passing through any fees required under Rule A–11 to their issuer clients. *See* Release No. 34–81841 (October 10, 2017), 82 FR 48135, at note 9 and corresponding discussion (October 16, 2017) (File No. SR–MSRB–2017–07) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to MSRB Rule A–11, on Assessments for Municipal Advisor Professionals, To Amend the Annual Municipal Advisor Professional Fee).

[5] The MSRB's fiscal year 2020 commences on October 1, 2019 and concludes on September 30, 2020.

[6] The MSRB's fiscal year 2021 commences on October 1, 2020 and concludes on September 30, 2021.

[7] Public Law No. 111–203, 124 Stat. 1376 (2010).

[8] *See* 15 U.S.C. 78*o*–4(b)(2)(J).

[9] The MSRB developed professional qualification exams, adopted new rules for municipal advisors, and extended rules to municipal advisors that previously applied only to brokers, dealers and municipal securities dealers (collectively, ''dealers.'') These include, but are not limited to: Rule G–44 regarding the supervisory and compliance obligations of municipal advisors, *see* Release No. 34–73415 (October 23, 2014), 79 FR 64423 (October 29, 2014) (File No. SR–MSRB–2014–06) (SEC order approving Rule G–44); Rule G–42 regarding the duties of non-solicitor municipal advisors, *see* Release No. 34–76753 (December 23, 2015), 80 FR 81614 (December 30, 2015) (File No. SR–MSRB–2015–03) (SEC order approving Rule G–42); amendments to Rule G–20, on gifts, gratuities and non-cash compensation, to extend provisions of the rule to municipal advisors, *see* Release No. 34–76381 (November 6, 2015), 80 FR 70271 (November 13, 2015) (File No. SR–MSRB–2015–09) (SEC order approving amendments to Rule G–20); amendments to Rule G–37, on political contributions and prohibitions on municipal securities business, to extend its provisions to municipal advisors, *see* Release No. 34–76763 (December 23, 2015), 80 FR 81710 (December 30, 2015) (File No. SR–MSRB–2015–14) (notice of filing of proposed amendments to Rule G–37); and amendments to Rule G–3 to establish registration and professional qualification requirements for municipal advisors, *see* Release No. 34–74384 (February 26, 2015), 80 FR 11706 (March 4, 2015) (File No. SR–MSRB–2014–08) (SEC order approving registration and professional qualification requirements for municipal advisor representatives and municipal advisor principals).

Rule A–11 to begin to defray a portion of the costs and expenses associated with its regulation of municipal advisors.

While the MSRB has expended significant resources in developing a regulatory framework for municipal advisory activities, the Board has previously deferred raising municipal advisor fees to more equitably defray the expenses associated with this activity in order to allow municipal advisors additional time to adapt to the regulations.[10] As more fully discussed below,[11] the MSRB's fee structure remains predominantly dependent on dealer fees, particularly market activity fees paid exclusively by dealers. Although the organization does offset some portion of its costs and expenses through its fees on municipal advisors, the Board believes that its present fee structure does not appropriately allocate the costs of operating the MSRB between dealers and municipal advisors (collectively, ''regulated entities''). The Board has determined that the Revised Professional Fee will result in a fairer and more equitable fee structure when compared to the current distribution of fees.

The purpose of the proposed rule change is to continue rebalancing this dealer-fee concentration by phasing-in an increase to the municipal advisor professional fee under Rule A–11 over the next two years. The Board believes that the Revised Professional Fee is necessary and appropriate to achieve (1) a more equitable allocation of fees among its regulated entities and (2) a fairer distribution of the total expenses of its regulatory activities, systems development, and other operational activities. Moreover, by incrementally increasing the fee contribution of municipal advisors, the proposed rule change will advance the Board's goal of developing a sustainable financial model that will enable the MSRB to year-over-year fulfill its statutory mandate and meet the unique responsibilities of being the self-regulatory organization for the municipal securities market.

[10] *See* MSRB Regulatory Notice 2017–20 (September 29, 2017) (describing how the MSRB reconsidered the amount of the municipal advisor professional fee, ''but determined not to increase it at that time in order to allow municipal advisors additional time to adapt to regulation'' and stating that the ''MSRB will continue to review and evaluate its fees over time to ensure that fees are allocated fairly and equitably across all regulated entities.'').

[11] *See* related discussion under *The Board's Current Revenue Sources infra.*

The Board's Statutory Mandate

The MSRB's statutory mandate under the Exchange Act encompasses the protection of investors, state and local government issuers, other municipal entities and obligated persons, and the public interest by promoting a fair and efficient municipal market. The MSRB discharges its statutory mandate through (1) the establishment of rules for dealers and municipal advisors, (2) the collection and dissemination of market information, and (3) other related activities, such as regulatory coordination, compliance support, the development of professional qualifications programs, education, and outreach.[12]

The Board's Comprehensive Regulatory Framework for Municipal Advisors

In accordance with its statutory mandate under the Exchange Act, the MSRB has established a comprehensive regulatory framework for the regulation of municipal advisors. This framework includes the development, implementation, and maintenance of (1) a set of rules governing the activities of municipal advisors,[13] (2) municipal advisor recordkeeping requirements,[14] (3) municipal advisory client education and protection provisions,[15] and (4) professional standards meant to ensure that all municipal advisor professionals have a baseline knowledge of federal securities laws, rules, and regulations.[16] As part of this latter category of activities, the MSRB has established the Municipal Advisor Representative Qualification Examination (the ''Series 50 Exam'')[17] and is finalizing the Municipal Advisor Principal Qualification Examination (the ''Series 54 Exam'').[18]

The MSRB has also undertaken considerable efforts to assist municipal advisors in understanding and complying with this regulatory framework. These efforts include the creation of compliance resources, compliance-oriented notices, and similar publications[19] and the development of, and participation in, outreach events and educational webinars.[20]

The Board's Ongoing Fee Review

The Board has set a long-term strategic goal of developing a sustainable financial model that ensures the MSRB will continue to achieve its unique regulatory mission. The Board believes that its financial model must reasonably balance the costs of achieving its mission with appropriate expense management and the fair and equitable allocation of fees from a diversity of funding sources. The Board

[12] *See* Section 15B(b)(2) of the Act (15 U.S.C. 78*o*–4(b)(2)) (in relevant part, requiring the Board to propose and adopt rules that ''at a minimum'' meet a baseline of statutory mandates, including the adoption of rules with respect to municipal advisors that ''prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients''); Section 15B(b)(3) of the Act (15 U.S.C. 78*o*–4(b)(3)) (permitting the Board to establish information systems); Section 15B(b)(4) of the Act (15 U.S.C. 78*o*–4(b)(4)) (permitting the Board to provide guidance and assistance in the enforcement of, examination for, compliance with the rules of the Board); and MSRB Rule A–2 (''Subject to the provisions of the Act and the rules and regulations of the Commission thereunder, and other applicable law, the Board shall have the power to determine all matters relating to the operation and administration of the Board and to exercise all other rights and powers granted by the Act and other applicable law to the Board.'').

[13] *See* Rule G–17, on conduct of municipal securities and municipal advisory activities; Rule G–20, on gifts gratuities, non-cash compensation and expenses of issuance; Rule G–37, on political contributions and prohibitions on municipal securities business and municipal advisory business; Rule G–40, on advertising by municipal advisors; Rule G–42, on duties of non-solicitor municipal advisors; Rule G–44, on supervisory and compliance obligations of municipal advisors, each respectively, available at *http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx.*

[14] *See* Rule G–8, on books and records to be made by brokers, dealers, and municipal securities dealers and municipal advisors, available at *http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx.*

[15] *See* Rule G–10, on investor and municipal advisory client education and protection, available at *http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx.*

[16] *See* Rule G–2, on standards of professional qualification; and Rule G–3, on professional qualification requirements, respectively, available at *http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx.*

[17] *See* Release No. 34–74384 (February 26, 2015), 80 FR 11706 (March 4, 2015) (File No. SR–MSRB–2014–08).

[18] *See* Release No. 34–84630 (November 20, 2018), 83 FR 60927 (November 27, 2018) (File No. SR–MSRB–2018–07).

[19] For example, the MSRB supports regulatory compliance by municipal advisors by providing resources about MSRB requirements, as well as more general educational material. Municipal advisors may access these resources and others, including the Municipal Advisor Review, the MSRB's quarterly newsletter for municipal advisors at *http://www.msrb.org/Regulated-Entities/Resources.aspx.* In addition, the MSRB has published several regulatory notices for municipal advisors to help keep market participants informed of regulatory changes and to provide guidance on the application of existing rules. *See, e.g.,* MSRB Notice 2017–08, Application of MSRB Rules to Solicitor Municipal Advisors (May 4, 2017); MSRB Notice 2017–13, MSRB Provides Guidance on Duties of Non-Solicitor Municipal Advisors in Conduit Financing Scenarios (July 13, 2017).

[20] For example, the MSRB provides free education and training webinars on municipal market topics, regulatory and compliance issues, and the use of MSRB market transparency systems. Municipal advisors may register for new webinars and access on-demand webinars, including some webinars that provide CPE credit at *http://www.msrb.org/Regulated-Entities/Webinars.aspx.*

routinely examines revenues and expenses in the normal course of its prudent fiscal management in continuous pursuit of fairness and equity in the revenue framework and to ensure expenses are appropriately calibrated. Recognizing that in any given year there could be more or less activity by a particular class of regulated entities, the Board, as it has historically, seeks to maintain a fee structure that results in a balanced and reasonable contribution, over time, from all regulated entities. Revenues are managed through new fees,[21] fee increases, deficit budgets funded by excess reserves,[22] revisions to pricing for propriety products, and other activities. The Board monitors its funding to determine whether the respective sources are contributing appropriately in light of the MSRB's statutory mandate and unique responsibilities in the municipal securities market.

Based on its ongoing fee review, and, in light of the current concentration in revenue sources discussed immediately below, the MSRB believes that its current fee structure should be revised to strive for greater fairness in its allocation of expenses and costs among its regulated entities and, thereby, promote less concentration in certain of its revenue sources.

The Board's Current Fee Structure

The MSRB assesses regulated entities various fees designed to defray the costs of its operations and administration. Section 15B(b)(2)(J) of the Act[23] provides, in pertinent part, that each regulated entity shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs of operating and administering the Board and that the MSRB shall have rules specifying the amount of such fees. The current fees are:

1. Municipal advisor professional fee (Rule A–11)
   $500 for each covered representative as of January 31 of each year, as further described herein;
2. Initial registration fee (Rule A–12)
   $1,000 one-time registration fee to be paid by each dealer to register with the MSRB before engaging in municipal securities activities and by each municipal advisor to register with the MSRB before engaging in municipal advisory activities;
3. Annual registration fee (Rule A–12)
   $1,000 annual fee to be paid by each dealer and municipal advisor registered with the MSRB;
4. Late fee (Rules A–11 and A–12)
   $25 monthly late fee and a late fee on overdue balances computed according to the prime rate until such balance is paid;[24]
5. Underwriting fee (Rule A–13)[25]
   $.0275 per $1,000 of the par value paid by a dealer, on all municipal securities purchased from an issuer by or through such dealer, whether acting as principal or agent as part of a primary offering, except in limited circumstances; and in the case of an underwriter of a primary offering of certain municipal fund securities (as defined in Rule G–45), $.005 per $1,000 of the total aggregate assets for the reporting period (*i.e.,* the 529 savings plan fee on underwriters);[26]
6. Transaction fee (Rule A–13)[27]
   .001% ($.01 per $1,000) of the total par value to be paid by a dealer, except in limited circumstances, for inter-dealer sales and customer sales reported to the MSRB pursuant to Rule G–14(b), on transaction reporting requirements;
7. Technology fee (Rule A–13)[28]
   $1.00 paid by a dealer per transaction for each inter-dealer sale and for each sale to customers reported to the MSRB pursuant to Rule G–14(b); and
8. Professional qualification examination fee (Rule A–16)
   $150 test development fee assessed per candidate for each MSRB professional qualification examination.

As discussed in the following section, the MSRB's present fee structure leads to a concentration of fee revenue paid by dealer firms and, thereby, creates certain revenue dependencies.

The Board's Current Revenue Sources

The MSRB funds its operations primarily by assessing fees on regulated entities, but also generates a small percentage of its revenue from other sources, like the sale of certain proprietary data subscription services.[29] The vast majority of the MSRB's revenue is generated from dealer-paid market activity fees, namely transaction fees, underwriting fees, and technology fees. Although the organization's revenue sources have become marginally more diversified since the initial enactment of the Dodd-Frank Act—when market activity fees accounted for 90% or more of the Board's annual revenue in certain fiscal years—dealer fees still accounted for more than 80% of revenue in fiscal year 2018. Absent further action, this desired shift towards more equitable fee allocations may not continue under the existing revenue framework, so the Board is evaluating changes to its fee structure that will further alleviate the

[21] As an example, the MSRB introduced a new fee on underwriters of 529 savings plans in 2018. Prior to this fee, underwriters of 529 savings plans had not paid a fee in this capacity since the MSRB began regulating such underwriters in 1999. *See* Release No. 34–81264 (July 31, 2017), 82 FR 36472 (August 4, 2017) (File No. SR–MSRB–2017–05).

[22] As an example, the MSRB is generating a deficit budget for this fiscal year 2019 and utilizing a portion of its excess reserves by temporarily reducing the rate of assessment for the MSRB's underwriting, transaction, and technology fees for dealers under Rule A–13 with respect to assessible activity occurring from April 1, 2019 through September 30, 2019. *See* Release No. 34–85400 (March 22, 2019), 84 FR 11841 (March 28, 2019) (''Temporary Reduction Release'').

[23] 15 U.S.C. 78*o*–4(b)(2)(J).

[24] Consistent with Rule A–11(b), a municipal advisor firm is only required to pay one $25 monthly late fee (regardless of the number of its covered representative(s) for which the per professional fee was not timely paid) if it fails timely to pay in full the total fee due under Rule A–11(a). This late fee is in addition to a late fee on the total overdue balance based on the Prime Rate.

[25] The MSRB temporarily reduced the rate of assessment for the MSRB's underwriting fees for activity that occurs from April 1, 2019 through and including September 30, 2019 to .00185% ($0.0185 per $1,000) of the applicable par value. *See* Rule A–13(h)(i). The temporary fee reduction is targeted at this fee, the transaction fee, and the technology fee in acknowledgment that these three fees ''contributed to the excess reserve position'' as compared to the MSRB's other fees. *See* Temporary Reduction Release, *supra* note 23, 84 FR at 11842 (March 28, 2019).

[26] As of May 2018, the Board invoices underwriters of a primary offering of certain municipal fund securities for the assessments due. *See* Release No. 34–81264 (July 31, 2017), 82 FR 36472 (August 4, 2017) (File No. SR–MSRB–2017–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Assess an Underwriting Fee on Dealers That Are Underwriters of Primary Offerings of Plans).

[27] The MSRB temporarily reduced the rate of assessment for the MSRB's transaction fees for activity that occurs from April 1, 2019 through and including September 30, 2019 to .00067% ($0.0067 per $1,000) of the applicable par value. *See* Rule A–13(h)(ii). The temporary fee reduction is targeted at this fee, the underwriting fee, and the technology fee in acknowledgment that these three fees ''contributed to the excess reserve position'' as compared to the MSRB's other fees. *See* Temporary Reduction Release, *supra* note 23, 84 FR at 11842 (March 28, 2019).

[28] The MSRB temporarily reduced the rate of assessment for the MSRB's technology fees for activity that occurs from April 1, 2019 through and including September 30, 2019 to $0.67 per transaction. *See* Rule A–13(h)(iii). The temporary fee reduction is targeted at this fee, the underwriting fee, and the transaction fee in acknowledgment that these three fees ''contributed to the excess reserve position'' as compared to the MSRB's other fees. *See* Temporary Reduction Release, *supra* note 23, 84 FR at 11842 (March 28, 2019).

[29] The MSRB charges data subscription service fees for subscribers, who include dealers, municipal advisors, and entities not regulated by the MSRB, seeking direct electronic delivery of municipal trade data and disclosure documents associated with municipal bond issues.

MSRB's concentrated dependency on dealer-paid revenue sources.

More specifically, market activity fees consistently comprise the majority of MSRB-revenue. The Board has determined that it must evaluate its other revenue sources, particularly to determine whether non-dealer fee changes may be enacted to strike a more sustainable and fairer balance of funding. The proposed rule change partially addresses this issue by increasing the total fee contribution of municipal advisor firms and, thereby, growing the MSRB's revenue base away from the strong dependency on dealer-paid market activity fees and more fairly and equitably allocating the costs associated with the organization's regulation of municipal advisors.

While the Board seeks to increase the aggregate fee contribution paid by municipal advisors as compared to dealers, it also seeks a fee increase that is equitable among all registered municipal advisor firms and does not place an undue fee burden on small firms. Of the approximately 500 municipal advisor firms registered with the MSRB in fiscal year 2018, a small minority of firms paid $10,000 or more in total annual municipal advisor professional fees, while the vast majority of firms paid no more than $2,500.[30] By assessing the fees on a per professional basis, the Board believes the fee increase is allocated fairly across the universe of municipal advisor firms.

In this regard, the Board considered a range of alternative fee modifications before deciding on the proposed rule change, including, among others, the collection of additional data to enable the assessment of fees based on a firm's overall market activity, as well as fees based on new issue par volume analogous to the dealer underwriting fee. However, the lack of uniformity in the services provided by municipal advisor firms[31] and the potential burden of new reporting requirements, particularly on small firms, led the Board, at this time, to elect an increase in the existing municipal advisor professional fee under Rule A–11. The Board believes that the number of covered representatives serves as a reasonable proxy for overall market activity, especially in the absence of other market data, and, thus, the proposed rule change will lead to a fee structure that better reflects a firm's overall municipal advisory activities by increasing the total proportion of fees paid by larger firms with more covered representatives. The proposed rule change is expected to result in the increased total aggregate contribution of all municipal advisor firms and, particularly, the total fees paid by larger firms.

The Board's Annual Municipal Advisor Professional Fee

The MSRB established Rule A–11 in 2014 to help defray the costs and expenses of operating and administering the MSRB, particularly the increased costs as a result of the regulation of municipal advisors.[32] Rule A–11(a) currently provides that each municipal advisor that is registered with the Commission shall pay to the Board a recurring annual fee equal to $500[33] for each covered representative[34] by April 30th of each year.[35] The annual professional fee under Rule A–11(a) is due by April 30th each year in the manner provided by the MSRB Registration Manual. Rule A–11(b) also provides for late fees on annual professional fees that are not paid in full.

The proposed rule change will provide that each municipal advisor that is registered with the Commission shall pay to the Board an annual fee equal to $750 for each covered representative for the MSRB's fiscal year 2020 and equal to $1,000 for each covered representative for the MSRB's fiscal year 2021 and thereafter.[36] The Board estimates that the proposed rule change will generate approximately $760,000 in additional revenue for fiscal year 2020 and $1.5 million in additional revenue for fiscal year 2021, as compared to current estimates under the present fee structure. In percentage terms, the proposed rule change is expected to result in the municipal advisor professional fee accounting for approximately 5.7% of the MSRB's fiscal year 2020 budgeted revenue and approximately 7.0% of MSRB's fiscal year 2021 budgeted revenue, up from 3.9% and 3.6%, respectively, under projections absent the proposed rule change. Specific to the allocation of fees among municipal advisors, the MSRB estimates that the vast majority of municipal advisor firms will have an incremental increase above current fee rates of between $250 and $1,250 in fiscal year 2020 and between $500 and $2,500 in fiscal year 2021. The forecasted median increase for municipal advisor firms will be $500 in fiscal year 2020 and $1,000 in fiscal year 2021. Accordingly, the Board believes the proposed increases will not impose an undue fee burden on small firms.

Conclusion

The Board believes that the proposed rule change is reasonable as well as necessary and appropriate to help defray the expenses and costs of

[30] Based on internal data, the MSRB calculates that 24 firms, or about 5% of firms registered in fiscal year 2018, fell into this highest tier of annual municipal advisor professional fee payments, while 401 firms, or about 80% of then-registered firms, fell into this lowest tier of these fee payments.

[31] For example, the MSRB understands that some municipal advisor firms may focus solely on providing advice to clients about swap activities and, thus, a municipal advisor fee analogous to the dealer underwriting fee based on new issue par volume would not affect such a firm, regardless of whether the firm was very active or inactive in the market. Similarly, the MSRB understands that municipal advisors can have varying compensation structures, such as hourly rates, per-transaction fees, and/or project-based compensation. MSRB fees that did not adequately account for this variation could lead to inequitable payment outcomes or other market distortions.

[32] *See* Release No. 34–72019 (April 25, 2014), 79 FR 24798, 24798 (May 1, 2014) (File No. SR–MSRB–2014–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of New Rule A–11, on Assessments for Municipal Advisor Professionals); *see also* MSRB Notice 2014–09, MSRB to Implement New MSRB Rule A–11 Establishing Fees for Municipal Advisor Professionals (April 17, 2014).

[33] As first adopted in 2014, Rule A–11 required payment to the Board of an annual fee equal to $300 for each covered representative. *Id.* The MSRB amended Rule A–11 in 2017 to increase this fee from $300 to $500 for each covered representative and made other technical changes. *See* Release No. 34–81841 (October 10, 2017), 82 FR 48135 (October 16, 2017) (File No. SR–MSRB–2017–07) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting to MSRB Rule A–11, on Assessments for Municipal Advisor Professionals, To Amend the Annual Municipal Advisor Professional Fee).

[34] As previously defined above, the term ''covered representative'' for purposes of this filing means each person associated with the municipal advisor who is qualified as a municipal advisor representative in accordance with Rule G–3 and for whom the municipal advisor has on file with the Commission a Form MA–I as of January 31 of each year.

[35] A person is qualified as a municipal advisor representative in accordance with Rule G–3(d) when such person has taken and passed the Series 50 Exam. As of September 12, 2017, only an associated person of a municipal advisor firm who has passed the Series 50 Exam may engage in municipal advisory activities on behalf of the municipal advisor firm. Additionally, municipal advisor principals must likewise qualify as a municipal advisor representative by passing the Series 50 Exam. *See* MSRB Notice 2017–09, MSRB Reminds Municipal Advisors that the Series 50 Exam Deadline is September 12, 2017 (May 8, 2017). Because, pursuant to Rule G–3, all municipal advisor principals must also qualify by examination as a municipal advisor representative, the proposed fee increase will equally apply to municipal advisor principals.

[36] While the MSRB has designated the proposed rule change for immediate effectiveness, by its terms, the assessment of the amended annual professional fees for each covered representative will be based on the number of covered representatives as of January 31 of each respective fiscal year. The MSRB intends to send the first invoice of the applicable fee level (measured as of January 31 for each year) to firms on or about the beginning of April each year for payment by April 30.

operating and administering the MSRB. It is an important step towards the Board's strategic goal of promoting the organization's long-term financial stability. The Board believes the proposed fee increases will help the organization provide for assessments that are more fairly and equitably apportioned among all MSRB regulated entities by further diversifying the MSRB's revenue base away from its strong dependency on dealer-paid market activity fees.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act,[37] which states that the MSRB's rules shall:

> . . . provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board.

The MSRB believes that the proposed rule change is necessary and appropriate to fund the operation and administration of the Board and satisfies the requirements of Section 15B(b)(2)(J).[38] The MSRB believes the proposed rule change is necessary and appropriate because it will help defray the costs of the Board's rulemaking, compliance support, professional qualifications programs, and other activities relating to municipal advisors.

As discussed above, the MSRB has engaged in significant rulemaking to put into place a regulatory framework for municipal advisors and has engaged in considerable activities to assist municipal advisors in understanding their obligations and complying with the applicable rules. Because the MSRB does not have authority to examine or enforce its rules, the MSRB coordinates closely with the regulatory authorities responsible for such examination and enforcement, including by making market statistics, analytical data, and other municipal securities information available in support of their examination and enforcement activities and providing training regarding the municipal market and MSRB rules. The MSRB expects to continue its many activities relating to the municipal securities market, including the regulation of municipal advisors, with a continued focus on providing resources that enhance the understanding of MSRB rules and improve compliance therewith.

The proposed rule change will assist in defraying some of the costs and expenses associated with these activities and will help ensure the MSRB is funding these regulatory activities in a financially responsible way. However, even with the proposed rule change's fee increase, the Revised Professional Fee will only defray a small portion of the costs and expenses of operating and administering the MSRB—generating an estimated 5.7% of fiscal year 2020 budgeted revenue and 7.0% of fiscal year 2021 budgeted revenue.[39] Thus, the Board believes the proposed rule change is necessary and appropriate because it is a measured, incremental approach that moves towards a more equitable balance of fees among regulated entities and a fairer allocation of the expenses of the regulatory activities, systems development, and operational activities undertaken by the organization, while not overly burdening municipal advisors with more accelerated fee increases at this time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board has conducted an analysis on the proposed rule change to gauge its overall economic impact and assess its burden on competition.[40] For the reasons discussed below, the Board has determined that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, nor will it impose any unnecessary or inappropriate regulatory burden on small municipal advisors.

The Board's Determinations Regarding the Proposed Rule Change's Burden on Competition

Section 15B(b)(2)(C)[41] of the Exchange Act provides that MSRB rules shall ''not be designed . . . to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.'' The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C),[42] because the proposed rule change is necessary and appropriate to ensure that municipal advisors more equitably contribute to defraying the costs and expenses of operating and administering the MSRB. The Board also believes that the proposed rule change does not result in any burden on competition that is not necessary or appropriate, principally because the fee applies equally to all municipal advisors based on the number of covered representatives at each municipal advisor firm.

- The Board's Analysis of the Existing Fee Structure and the Necessity of the Revised Professional Fee

The goal of the proposed rule change is to diversify the MSRB's revenue base away from its strong dependency on dealer-paid market activity fees and to more fairly align the aggregate amount of fees paid by a given class of regulated entities with the overall costs of the MSRB's regulatory activities associated with those entities and the overall costs of the organization. When the Board analyzed the aggregate amount of fees paid by dealers against the aggregate amount of fees paid by municipal advisors, the Board determined that the fees historically paid, and forecasted to be paid, by municipal advisors are out of proportion to the overall costs and expenses of operating and administering the Board. Similarly, when it analyzed its expenses, the Board determined that the amounts paid by municipal advisors under the current fee structure have not, and are not projected to, fully defray the costs and expenses associated with the MSRB's comprehensive regulatory framework for municipal advisors.

The Board came to these determinations based in part on the fact

[37] 15 U.S.C. 78*o*–4(b)(2)(J).

[38] *Id.*

[39] The Board does not believe that it is necessary to strictly allocate its fees among regulated entities based upon the proportion of the MSRB's activities devoted to that class of regulated entity (*i.e.,* dealers versus municipal advisors). *See, e.g.,* Release No. 34–63621 (December 29, 2011), 76 FR 604, at 606–607 (January 5, 2011) (File No. SR–MSRB–2010–10) (summarizing the MSRB's response to comments from dealers desiring the increase of municipal advisor fees to an amount that covers the ''entire cost of their own regulation''). Section 15B(b)(2)(J) (15 U.S.C. 78*o*–4(b)(2)(J)) grants the Board discretion to provide for the payment of ''such reasonable fees and charges as may be *necessary or appropriate* to defray the costs and expenses of *operating and administering the Board*'' (emphasis added). Regardless of the Board's statutory authority to collect payments from municipal advisors to fund its overall operation and administration, the Board has determined that the percentages stated above are far less than the proportion of the MSRB's activities that are related to municipal advisors and the historical costs associated with such activities.

[40] The scope of the Board's policy on the use of economic analysis generally excludes proposed rule changes that are qualified to be filed as immediately effective. *See* Policy on the Use of Economic Analysis in MSRB Rulemaking, at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx*. Despite this exclusion, the MSRB typically conducts such an analysis on those rule changes for which the MSRB seeks immediate effectiveness. Such analyses primarily focus on the burden of competition on regulated entities for those immediately effective rule changes. Consistent with its prior proposed rule changes, the Board conducted the analysis described herein.

[41] 15 U.S.C. 78*o*–4(b)(2)(C).

[42] *Id.*

that the vast majority of the MSRB's revenue is generated from dealer firms, particularly market activity fees paid exclusively by dealers. Fiscal year 2018 revenue is generally representative of this fee concentration. Dealer market activity fees paid pursuant to Rule A–13 amounted to about 80% of revenue in fiscal year 2018. Registration fees paid by dealers pursuant to Rule A–12 amounted to approximately 3.3% in additional revenue for that fiscal year. By comparison, the aggregate amount of registration fees paid by municipal advisors pursuant to Rule A–12 totaled about 1.2% of revenue and annual professional fees paid by municipal advisors pursuant to Rule A–11 totaled about 3.8%, respectively, in the same period. In sum, municipal advisors paid a total of approximately 5.0% of the MSRB's aggregate revenue in fiscal year 2018.

The Board has determined that the proportion of revenue generated by fees from municipal advisors is significantly below the costs of MSRB activities related to municipal advisors.[43] As a result, the proportion of the MSRB operations funded by contributions from dealers is above the costs of MSRB activities related to dealers, and some portion of dealer-paid fees are effectively subsidizing the MSRB's regulatory activities associated with municipal advisors. The Board believes the Revised Professional Fee is necessary and appropriate to ensure that municipal advisors more equitably contribute to defraying the costs and expenses of operating and administering the MSRB.

• The Board's Determinations Regarding the Revenue Impacts of the Revised Professional Fee

The proposed rule change will be implemented in two phases—first, from the current level of $500 to $750 in MSRB fiscal year 2020, and, then, to $1,000 in MSRB fiscal year 2021 and thereafter. With these incremental increases, the Revised Professional Fee will account for an estimated 5.7% of MSRB's total revenue in fiscal year 2020 and an estimated 7.0% of total revenue in fiscal year 2021. Nonetheless, the MSRB believes that even after the Revised Professional Fee has been implemented, the fee revenue paid by municipal advisors will not fully defray the costs and expenses of their comprehensive regulatory framework and the proportionate costs associated with operating the organization.[44] The Board has determined that the Revised Professional Fee will result in a fairer and more equitable fee structure when compared to this current distribution of fees.

While further increases may be necessary and appropriate in the future, the Board has determined that an incremental, phase-in approach is superior to possible alternatives, particularly less incremental alternatives that would not allow municipal advisors the same amount of time to adjust to the increased amount of the Revised Professional Fee. Among other benefits, the incremental approach of the proposed rule change will give a municipal advisor firm a period to implement the Revised Professional Fee. This incremental approach will also have the ancillary benefit of providing the Board additional time to calibrate the costs of MSRB operations and evaluate possible fee alternatives. Accordingly, the Board believes the phase-in of the Revised Professional Fee over the following two years is appropriate to establish a transitional period for the increased fee.

• Other Precedents for SRO Fee Assessments Based on Firm Size

Lastly, the MSRB notes that other self-regulatory organizations and independent oversight and rulemaking boards, such as the Financial Industry Regulatory Authority (''FINRA''), the Public Company Accounting Oversight Board (''PCAOB''), National Futures Association (''NFA'') and the Financial Accounting Standards Board (''FASB''), all have some annual fee assessment structure that is based on the size of firms under regulation. For example, FINRA's annual registration fee and new member application fee assessments for broker-dealers are based on the number of branch offices and the number of registered persons; the PCAOB's annual fee assessment is based on the number of issuer audit clients and the number of personnel within each public accounting firm; NFA's annual member dues for swap dealers and Forex dealers are based on the tier size of member firms; and FASB's accounting support fees are allocated based on the average market capitalization of each issuer. The Board believes the Revised Professional Fee is similar to these other SRO annual fees, where the number of covered representatives is a reasonable proxy for firm size, and so analogously consistent and appropriate under the Act.

The Board's Determinations Regarding Small Municipal Advisors

Section 15B(b)(2)(L)(iv) of the Act[45] provides that MSRB rules ''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 persons, provided that there is robust protection of investors against fraud.'' The Board believes that the Revised Professional Fee is consistent with this provision of the Act, because it will not impose an unnecessary or inappropriate regulatory burden on small municipal advisors.

As is the case today, the total amount of the assessment payable by each municipal advisor will be dependent on the number of covered representatives employed by the firm and, therefore, will result in lower assessments for smaller firms with less covered representatives.[46] In this way, each firm's annual professional fee will bear a reasonable relationship to the level of regulated municipal advisory activities that are undertaken by the firm, in that the MSRB believes that firms with more covered representatives generally will engage in more regulated municipal advisory activities. As illustrated in Table 1 below, a firm with 50 professionals currently pays about 17 times as much in total fees as a firm with only a single professional. Under the Revised Professional Fee, however, the same firm with 50 professionals will pay over 25 times as much in total fees as the firm with one professional.

[43] Despite the fee increase of the proposed rule change, the Board has determined that revenues generated by the Revised Professional Fee will continue to be below these costs going forward. Expenses associated with market regulation and professional qualifications amounted to more than $6,400,000 in fiscal year 2018. Limiting the attribution of expenses solely to these activities, and excluding any expenses attributable to other activities that municipal advisors benefit from or are impacted by—such as outreach and education; administration of the board of directors; executive, financial, and risk management; and market structure, transparency, and operations—the revenue generated from the annual municipal advisor professional fee offsets less than 25% of the MSRB's market regulation and professional qualification expenses. The Board, however, declines to more steeply increase fees on municipal advisors in this proposed rule change for the reasons stated in this section, including because of the Board's determination that an incremental increase of an existing municipal advisor fee is superior to possible alternatives at this time.

[44] *Id.*

[45] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[46] The MSRB understands that the Form MA–I should be withdrawn for any person who fails to qualify as a municipal advisor representative in accordance with Rule G–3. *See* Registration of Municipal Advisors Frequently Asked Questions, at Question 16.1, available at *https://www.sec.gov/info/municipal/mun-advisors-faqs.shtml.*

Table 1

		Current Fees			Proposed Fees for Fiscal Year 2021		
	Number of Municipal Advisors	Annual Fee (Per Firm)	Per Professional Fee	Total Fee	Annual Fee (Per Firm)	Per Professional Fee	Total Fee
Firm 1	1	$ 1,000	$ 500	$ 1,500	$ 1,000	$ 1,000	$ 2,000
Firm 2	50	$ 1,000	$ 25,000	$ 26,000	$ 1,000	$ 50,000	$ 51,000
Ratio of Firm 2 to Firm 1				17.3			25.5

The Board's Analysis of Alternatives to the Revised Professional Fee

The Board considered a number of alternatives to the Revised Professional Fee. For example, the Board considered assessing a fee specifically tailored to the amount of regulated advisory activity each municipal advisory firm undertakes. The Board believed that such an approach would be more analogous to the market activity fees paid by a dealer, as the underwriting, transaction, and technology fees paid by a dealer firm under Rule A–13 roughly approximate the overall market activity of a dealer firm. However, the fees charged under Rule A–13 are dependent on the data individual dealers firms report to the MSRB about their primary market offerings and secondary market trades. MSRB rules do not currently require a municipal advisor to report analogous information about its activities, and the MSRB does not otherwise collect such information. Although the Board could draft rules requiring the submission of this data, instituting such a requirement would add novel compliance and reporting burdens.[47] Consequently, the Board determined that the Revised Professional Fee was superior at this time to these alternatives.

The Board's Ongoing Analysis of the Revised Professional Fee

Developing a fair and equitable, yet sustainable, financial model is, and will remain, an ongoing focus of the Board, as the organization continues to assess the costs of the MSRB's activities against the impacts and benefits its activities have on various stakeholders. The Board will continue to analyze the impact of the Revised Professional Fee, in the context of its overall fee structure, to inform future budgeting decisions and develop a more optimal allocation of revenues in the future. This analysis will necessarily focus on the fee burden of municipal advisors in particular, but also any broader impact the Revised Professional Fee may have on the municipal securities market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not solicit comment on the proposed rule change. Therefore, there are no comments on the proposed rule change received from members, participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[48] and paragraph (f) of Rule 19b–4 thereunder.[49] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2019–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2019–11. This file number should be included on the subject line if email 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2019–11 and should be submitted on or before October 21, 2019.

[47] In contrast to the reporting requirements of dealer firms under MSRB Rule G–14 and MSRB Rule G–34 that provide important transparency to the market in addition to being a tool for tailoring dealer fee assessments, the Board believes that requiring municipal advisors to report data about their regulatory activities primarily for the purpose of the calculation of fees is a less desirable alternative at this time to the proposed rule change.

[48] 15 U.S.C. 78s(b)(3)(A).

[49] 17 CFR 240.19b–4(f).

For the Commission, pursuant to delegated authority.[50]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–21100 Filed 9–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87073; File No. SR–Phlx–2019–37]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Pricing of a Technology Infrastructure Migration

September 24, 2019.

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 September 18, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 Phlx pricing at Options 7, Section 9 titled ''Other Member Fees.'' The amendment will describe the pricing with respect to a technology infrastructure migration.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on October 1, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 Exchange proposes to amend Phlx pricing at Options 7, Section 9 titled ''Other Member Fees.'' The Exchange previously filed a fee proposal to not assess a fee for duplicative FIX Ports [3] and CTI Ports [4] to new FIX Ports and CTI Ports, during the month of September 2019, in connection with an upcoming technology infrastructure migration.[5] With this rule change, the Exchange proposes to not assess a fee for duplicative FIX Ports and CTI Ports to new FIX Ports and CTI Ports, during the month of October 2019 to allow additional time for the Exchange to migrate its technology.

Description of Migration and Pricing Impact

In connection with this migration, members may request new FIX Ports and CTI Ports during the month of October 2019, which are duplicative of the type and quantity of their current ports, at no additional cost to allow for testing of the new ports and allow for continuous connection to the match engine during the transition period.[6] For example, a Phlx member with 3 FIX Ports and 1 CTI Port on October 1, 2019 could request 3 new FIX Ports and 1 new CTI Port for the month of October 2019 at no additional cost. The Phlx member would be assessed only for the legacy market ports, in this case 3 FIX Ports and 1 CTI Port for the month of October 2019 and would not be assessed for the new ports, which are duplicative of the current ports. A member may acquire any additional legacy ports during the month of October 2019 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a member to acquire any additional ports, rather the migration requires a new port to replace any existing ports provided the member desired to maintain the same number of ports.[7] A member desiring to enter orders into Phlx is required to obtain 1 FIX Port. A member may also obtain order and execution ports, such as a CTI Port, to receive clearing messages. The number of additional FIX or order and execution ports obtained by a member is dependent on the member's business needs.

Applicability to and Impact on Members [8]

The proposal is not intended to impose any additional fees on any Phlx members. All members may enter orders on Phlx. As noted above, a Phlx member may enter all orders on Phlx through one FIX Port. The Exchange does not require a Phlx member to obtain more than one FIX Port, however, a member may obtain multiple FIX Ports or a CTI Port to meet its individual business needs. This proposal is intended to permit a Phlx member to migrate its current FIX Ports and CTI Ports at no additional costs during the month of October 2019 to allow for continuous connection to the Exchange. Members would only be assessed a fee for their current FIX Ports and CTI Ports and not be assessed a fee for any new duplicative ports they acquire in connection with the technology

[50] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Financial Information eXchange or ''FIX'' is an interface that allows members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. *See* Rule 1080(a)(i)(A).

[4] Clearing Trade Interface or ''CTI'' is a real-time clearing trade update message that is sent to a member after an execution has occurred and contains trade details specific to that member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or ''CMTA'' or ''OCC'' number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. *See* Rule 1070(b)(1).

[5] *See* Securities and Exchange Act Release No. 86795 (August 28, 2019), 84 FR 46578 (September 4, 2019) (SR–Phlx–2019–30).

[6] Members would contact Market Operations to acquire new duplicative FIX Ports and CTI Ports. *See* Options Technical Update #2019–3.

[7] The migration is 1:1 and therefore would not require a member to acquire new ports, nor would it reduce the number of ports needed to connect.

[8] On May 21, 2019, the SEC Division of Trading and Markets (the ''Division'') issued fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Guidance''). Within the Guidance, the Division noted, among other things, that the purpose discussion should address ''how the fee may apply differently (*e.g.,* additional cost vs. additional discount) to different types of market participants (*e.g.,* market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.'' *See* Guidance (available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.