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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–077 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–BX–2009–077. 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 inspection and copying 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 such 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 publicly available. All submissions should refer to File Number SR–BX–2009–077 and should be submitted on or before December 31, 2009.

[12] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29421 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61115; File No. SR–Phlx–2009–97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Dividend, Merger and Short Stock Interest Strategies

December 4, 2009.

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 November 23, 2009, 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 the fee caps on equity option transaction charges on dividend,[3] merger,[4] and short stock interest[5] strategies, which fee caps are currently set at $1,000 and $25,000 on equity option transaction charges on dividend, merger, and short stock interest strategies, to expand these fee caps to apply to equity options transaction fees assessed on all Registered Options Traders (on-floor) (''ROTs''), specialists, firms and broker-dealers, when such members are trading in their own proprietary account.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after December 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, 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 purpose of the proposed rule change is to amend the transaction charge for dividend, merger and short stock strategies to apply to all member organizations trading in their own proprietary account to encourage member organizations to trade on the Exchange. The Exchange believes that offering the cap to all member organizations will continue to attract additional liquidity and order flow to the Exchange and allow the Exchange to remain competitive with other options exchanges in connection with these types of options strategies.

Currently, equity options transaction charges assessed to specialists and ROTs are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class. In addition, there is a $25,000 per member organization fee cap on equity option transaction charges incurred in one month for dividend, merger and short stock interest strategies combined. The

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

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposal, the Exchange defines a ''dividend strategy'' as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. *See e.g.,* Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40).

[4] For purposes of this proposal, the Exchange defines a ''merger strategy'' as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock.

[5] For purposes of this proposal, the Exchange defines a ''short stock interest strategy'' as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

Exchange proposes to apply these fee caps on the equity options transaction fees assessed to ROTs, specialists, Firms and Broker-Dealers, when such members are trading in their own proprietary account.

In order to capture the necessary information electronically, the Exchange has modified the Floor Broker Management System (FBMS)[6] to allow for members to designate on the trade ticket whether the trade involves a dividend, merger, or short stock interest strategy[7].

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that expanding the dividend, merger and short stock interest strategy fee caps to apply equity transaction charges assessed to all member organizations is equitable because it uniformly applies to all member organizations. The Exchange's proposal to limit the fee cap to transactions occurring in the member's proprietary account is consistent with the current fee schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.[10] For example, the Exchange assesses different transaction fees applicable to the execution of Principal Acting as Agent Orders (''P/A Orders'')[11] and Principal Orders (''P Orders'')[12] sent to the Exchange via the Intermarket Option Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan''). The Exchange charges $0.45 per option contract for P Orders sent to the Exchange and $.30 per contract for P/A Orders.[13] Also, the Exchange recently amended its fee schedule to assess a different transaction fee when waiving the Firm Proprietary Options Transaction Charge for members executing facilitation orders.[14] The Exchange believes that applying dividend, merger and short stock interest strategy fee caps to all member organizations, when such members are trading in their own accounts, is consistent with rate differentials that exist in the current fee schedule and serves to encourage members to facilitate customer order flow.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[15] and paragraph (f)(2) of Rule 19b–4[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–97 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–Phlx–2009–97. 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 inspection and copying 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–Phlx–2009–97 and should be submitted on or before December 31, 2009.

[17] 17 CFR 200.30–3(a)(12).

[6] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[7] The Exchange eliminated its manual rebate process and modified certain trading tickets on June 28, 2007. *See* Securities Exchange Release No. 55972 (March 6, 2009), 74 FR 10980 (March 13, 2009) (SR–Phlx–2007–47) [sic].

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] NYSE Amex currently charges different rates to different market participants in assessing its firm facilitation fee. *See* Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR–NYSEAmex–2009–38).

[11] A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i) [sic].

[12] A Principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. *See* Exchange Rule 1083(k)(ii) [sic].

[13] *See* Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR–Phlx–2009–53).

[14] *See* Securities Exchange Act Release No. 60477 (August 11, 2009), 74 FR 41777 (August 18, 2009) (SR–Phlx–2009–67).

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

[16] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29422 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61110; File No. SR–MSRB–2009–17]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of (i) Amendments to Rule G–8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers), Rule G–9 (Preservation of Records), and Rule G–11 (New Issue Syndicate Practices); (ii) a Proposed Interpretation of Rule G–17 (Conduct of Municipal Securities Activities); and (iii) the Deletion of a Previous Rule G–17 Interpretive Notice

December 3, 2009.

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 November 18, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 has filed with the Commission a proposed rule change consisting of (i) proposed amendments to Rule G–8 (books and records to be made by brokers, dealers and municipal securities dealers), Rule G–9 (preservation of records), and Rule G–11, (new issue syndicate practices); (ii) a proposed interpretation (the ''proposed interpretive notice'') of Rule G–17 (conduct of municipal securities activities); and (iii) the deletion of a previous Rule G–17 interpretive notice on priority of orders dated December 22, 1987 (the ''1987 interpretive notice''). The MSRB requested that the proposed rule change become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) occurs more than 60 days after approval of the proposed rule change by the SEC.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), 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. 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 proposed amendments to Rule G–11 would: (1) Apply the rule to all primary offerings, not just those for which a syndicate is formed; (2) require that all dealers (not just syndicate members) disclose whether their orders are for their own account or a related account; and (3) require that priority be given to orders from customers over orders from syndicate members for their own accounts or orders from their respective related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering, unless the issuer otherwise agrees or it is in the best interests of the syndicate not to follow that order of priority.

The proposed amendments to Rules G–8 and G–9 would require that records be retained for all primary offerings of: (1) All orders, whether or not filled; (2) whether there was a retail order period and, if so, the issuer's definition of ''retail;'' and (3) those instances when the syndicate manager allocated bonds other than in accordance with the priority provisions of Rule G–11 and the specific reasons why it was in the best interests of the syndicate to do so.

The proposed interpretive notice would provide that violation of these priority provisions would be a violation of Rule G–17, subject to the same exceptions as provided in proposed amended Rule G–11. It also would provide that Rule G–17 does not require that customer orders be accorded greater priority than orders from dealers that are not syndicate members or their respective related accounts. The proposed interpretive notice also would provide that it would be a violation of Rule G–17 for a dealer to allocate securities in a manner that is inconsistent with an issuer's requirements for a retail order period without the issuer's consent. Issuance of the notice, in addition to the amendments to Rule G–11, is consistent with previous guidance issued by the Board that all activities of dealers must be viewed in light of the basic fair dealing principles of Rule G–17, regardless of whether other MSRB rules establish additional requirements on dealers.[3]

The guidance set forth in the proposed interpretive notice arose out of the Board's ongoing review of its General Rules as well as concerns expressed by institutional investors that their orders were sometimes not filled in whole or in part during a primary offering, yet the bonds became available shortly thereafter in the secondary market. They attributed that problem to two causes: first, some retail dealers were allowed to place orders in retail order periods without going away orders and second, syndicate members, their affiliates, and their respective related accounts were allowed to buy bonds in the primary offering for their own account even though other orders remained unfilled. There was also concern that these two factors could contribute to restrictions on access to new issues by retail investors, in a manner inconsistent with the issuer's intent.

The MSRB had last addressed the priority of orders in the 1987 interpretive notice.[4] That guidance interpreted Rule G–17 to require generally that customer orders be filled before orders from dealers and dealer-related accounts. Dealer-related accounts were defined to ''include a municipal securities investment portfolio, arbitrage account, or secondary trading account of a syndicate member, a municipal securities investment trust sponsored by a syndicate member, or an accumulation account established in connection with such a municipal securities investment trust.'' The notice did not limit the ability of the syndicate manager to

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

[2] 17 CFR 240.19b–4.

[3] MSRB Notice 2009–42 (July 14, 2009)—Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities.

[4] The 1987 interpretive notice was filed with the SEC on December 22, 1987 for immediate effectiveness. *See* File No. SR–MSRB–1987–14.