

Number SR–MSRB–2010–13 and should be submitted on or before December 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63305; File No. SR–Phlx–2010–153]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Update and Streamline the Process for Specialist Evaluations and Clarify the Time Within Which SQTs and RSQTs Begin To Electronically Quote After Assignment

November 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2010, NASDAQ OMX 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 is filing with the Commission a proposal to amend Phlx By-Law Article XI (Appeals) Section 11–1; Phlx Rules 507 (Application for Approval as an SQT or RSQT and Assignment in Options), 508 (Allocation Application), 510 (SQT and RSQT Performance Evaluation), 511 (Specialist Performance Evaluation), and 515 (Specialist Evaluations); and Phlx Options Floor Procedure Advice (“OFPA”) C–8 (Options Specialist Evaluations) to update the specialist evaluation process; ensure timely electronic quotations by Streaming Quote Traders and Remote Streaming Quote Traders; ensure the ability of the Exchange to control allocation transfers;

and consolidate and delete unnecessary and obsolete rules and processes.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.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 self-regulatory organization 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 those 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 parts 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 By-Law Article XI Section 11–1; Phlx Rules 507, 508, 510, 511, and 515; and OFPA C–8 to enhance the ability to gauge specialist performance in an ever-increasingly competitive electronic trading environment; ensure timely electronic quotations by Streaming Quote Traders and Remote Streaming Quote Traders; ensure the ability of the Exchange to control allocation transfers; and consolidate and delete unnecessary and obsolete rules and processes.

###### Background

After the merger of The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) and the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX LLC),<sup>3</sup> the Commission in May 2009 approved a Phlx filing that, among other things, transferred all relevant duties from the Options Allocation, Evaluation and Securities Committee (“Allocation Committee”) to the Exchange staff and established that the Exchange administers Exchange Rules 500

<sup>3</sup> See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31); and 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (SR–NASDAQ–2008–035). See also Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx–2010–104).

through 599 (the “Allocation and Assignment Rules”).<sup>4</sup>

The Allocation and Assignment Rules generally describe the process for: Application for becoming and appointment of specialists; allocation of classes of options to specialist units and individual specialists;<sup>5</sup> application for becoming and approval of Streaming Quote Traders (“SQTs”) <sup>6</sup> and Remote Streaming Quote Traders (“RQTs”) <sup>7</sup> (together the “Streaming Quote Traders”) <sup>8</sup> and assignment of options to them; and performance evaluations for specialist units and Streaming Quote Traders. The Allocation and Assignment Rules also indicate, among other things, under what circumstances new specialist allocations and Streaming Quote Trader assignments may not be made.<sup>9</sup>

###### Specialist Evaluations

Rule 511 and Rule 515 deal with specialist evaluations and certain allocation procedures. Currently, Rule 511 indicates, among other things, that specialist performance evaluations standards and procedures may be used in respect of Exchange decisions regarding allocating new options classes; reallocating options classes for substandard performance; determining whether a specialist that has been transferred an options class is performing adequately; and determining whether a staff reorganization or material change with respect to a specialist unit has affected the ability of the unit to continue to perform

<sup>4</sup> See Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR–Phlx–2009–23) (approval order.) See also Rule 500.

<sup>5</sup> A specialist unit may have one or more individual specialists. See proposed Supplementary Material .05 to Rule 511.

<sup>6</sup> An SQT is a Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Rule 1014(b)(ii)(A).

<sup>7</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Rule 1014(b)(ii)(B).

<sup>8</sup> Streaming Quote Traders also include Directed SQTs (“DSQTs”) and Directed RSQTs (“DRSQTs”), which are SQTs and RSQTs that receive a Directed Order. Exchange Rule 1080(l)(i)(A) defines Directed Order.

<sup>9</sup> See, for example, Supplementary Material .01 to Rule 506 (specialist may not apply for a new allocation for a period of six months after an option allocation was taken away from the specialist in a disciplinary proceeding or an involuntary reallocation proceeding). See also Commentary .02 to Rule 507 (establishing the Maximum Number of Quoters in assigned equity options).

<sup>6</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

adequately in order to retain allocated securities. Rule 511 also discusses the process and timing for doing routine and special (cause) evaluations and reviews. Currently, Rule 515 similarly discusses specialist performance evaluations for options specialists and indicates, among other things, the timing and frequency of evaluations. The criterion to evaluate specialists may include, but is not limited to, quality of markets, observance of ethical standards, administrative responsibilities, and trade correction and exemptive relief data. Rule 515, like OFPA C-8, also discusses the use of floor broker questionnaires in the specialist evaluation process.

The Exchange proposes to eliminate the floor broker questionnaire ("questionnaire"), which asks floor brokers their opinions of specialist performance and presumes that a specialist unit performed below minimum standards if the specialist unit was rated in the bottom 10% of all units in the aggregate results for all questionnaires. The Exchange has found that such questionnaires, being wholly subjective in nature and not based on any hard data, would generally provide limited, if any, substantial value in the current fast-paced, competitive trading environment that includes numerous market participants and liquidity providers. The Exchange believes that the various types of specialist performance evaluations that are discussed in this filing enhance the evaluation process and make it increasingly data-based, and make questionnaires unnecessary. As such, the Exchange is deleting OFPA C-8 and all references to floor broker questionnaires in its Allocation and Assignment Rules and OFPAs.

The Exchange proposes to consolidate Rules 511 and 515 into Rule 511 and to adopt for specialist units<sup>10</sup> an objective review process that is similar to the process currently in use for Streaming Quote Traders per Rule 510, particularly in respect of minimum performance standards. The Exchange also proposes to relocate portions of the existing evaluation process from Rule 515 into Rule 511. As such, there would be two types of specialist evaluations or

<sup>10</sup> Proposed Supplementary Material .05 to Rule 511 states that reference to specialist unit within Rule 511 means the unit as a whole or any subpart of its operation that is acting in a specialist capacity on the Exchange and is subject to evaluation; and that a specialist unit may have one or more individual specialists. As such, individual specialist actions may be attributable to relevant specialist units in respect of matters discussed in this proposal such as evaluations. The proposed language in Rule 511 was moved from Rule 515 and updated to reflect current usage.

reviews per Rule 511: a) routine Specialist Performance Evaluations, which would be conducted on at least an annual basis,<sup>11</sup> and would include monthly Minimum Performance Reviews;<sup>12</sup> and b) Special Circumstance Evaluations, which may be conducted if a specialist unit's performance was so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining efficient, fair and orderly markets; and within six months after a new allocation and within four months after transfer of one or more options.<sup>13</sup>

The Exchange proposes changes to Rule 511 so that specialist suspension, termination, or restriction of allocations in one or more options may occur after two or more consecutive sub-standard Minimum Performance Reviews or after Special Circumstance Evaluations and after written notice. As discussed below, following substandard minimum performance, a specialist unit may have an opportunity for an informal meeting with Exchange staff; and following a Special Circumstance Evaluation may be afforded thirty days to improve performance. Moreover, after a Minimum Performance Review or a Special Circumstance Evaluation, a specialist or specialist unit<sup>14</sup> may appeal from a decision of the Exchange in accordance with Exchange By-Law Article XI, Section 11-1, after filing a written notice of appeal with the Exchange.<sup>15</sup> The Exchange believes that

<sup>11</sup> See proposed Rule 511(c).

<sup>12</sup> See proposed Rule 511(d).

<sup>13</sup> See proposed Rule 511(e).

<sup>14</sup> In proposed Rule 511(d) and Rule 511(e), a specialist has the right to request an appeal on behalf of his specialist unit.

<sup>15</sup> By-Law Article XI Section 11-1(c) states that an appeal: shall be heard by a special committee of the Board of Governors composed of three (3) Governors, of whom at least one (1) shall be an Independent Governor. The person requesting review may appeal by filing a written notice thereof with the Secretary of the Exchange within ten (10) days after a decision. The person requesting review shall be permitted to submit a written statement to and/or appear before this special committee. The Secretary of the Exchange shall certify the record of the proceeding, if any and the written decision and shall submit these documents to the special committee. The special committee's review of the action shall be based solely on the record, the written decision and any statement submitted by the person requesting the review. The special committee shall prepare and deliver to such person a written decision and reasons therefor. If the special committee affirms the action, the action shall become effective ten (10) days from the date of the special committee's decision. There shall be no appeal to the Board of Governors from any decision of the special committee.

The Exchange is correcting a reference in By-Law Article XI Section 11-1(c) from Rule 511(e) to Rule 511(d) or (e), in light of the internal numbering changes proposed in Rule 511; and cross-referencing Rule 507, which notes the availability of the appeal process.

this appeal process for specialists or specialist units per Rule 511, which is similar to the process afforded to Streaming Quote Traders per Rules 507 and 510, is fair and equitable and promotes uniformity for the various market participant members of the Exchange.<sup>16</sup> The Exchange is, for similar reasons of uniformity, establishing new minimum performance standards for specialist units.

The minimum performance standards for specialist units in proposed Rule 511(d), which are part of the Specialist Performance Evaluation process, are similar to the minimum performance standards for Streaming Quote Traders in Rule 510 Commentary .01.<sup>17</sup> This is done to promote a minimum performance floor across the Exchange for specialist units and Streaming Quote Traders.<sup>18</sup> Thus, proposed Rule 511(d) suggests the minimum acceptable performance for specialist units using the following criteria: (a) The percentage of time that the specialist unit represents or exceeds the Phlx Best Bid or Offer ("PBBO") in the options allocated to the unit;<sup>19</sup> and (b) quoting requirements of specialist units pursuant to Rule 1014.<sup>20</sup> Specifically, if the percentage of the total time that the options allocated to a specialist unit represent or exceed the PBBO is in the lowest quartile of all specialist units for two or more consecutive months, this may be considered sub-standard performance, that is, performance that does not attain minimum performance standards; and if a specialist unit fails

<sup>16</sup> For consistency, the Exchange proposes appeal language in Rules 510 and 511 that is similar, in relevant part, to that of Rule 507: An appeal to the Board of Governors from a decision of the Exchange \* \* \* may be requested \* \* \* by filing with the Secretary of the Exchange written notice of appeal within ten (10) days after the decision has been rendered, in accordance with Exchange By-Law Article XI, Section 11-1.

<sup>17</sup> See Securities Exchange Act Release No. 55080 (January 10, 2007), 72 FR 2324 (January 18, 2007) (SR-Phlx-2006-51) (order approving performance standards for Streaming Quote Traders and Remote Streaming Traders).

<sup>18</sup> Recognizing that among market participants on the Exchange specialists have diverse and at times greater market making responsibilities, which are not diminished by this filing, Specialist Performance Evaluations are available to the Exchange to review specialist performance and behavior (as discussed in more detail below).

<sup>19</sup> In that the Exchange is specifically establishing a measure of specialist performance on Phlx, the Exchange is changing the requirement to PBBO from NBBO (National Best Bid or Offer). A reference in Commentary .01 of Rule 510 is similarly changed to PBBO for the sake of conformity.

<sup>20</sup> This rule change proposal makes no changes to current quoting requirements for specialists delineated in Rule 1014. Rule 1014 is written in terms of specialists; as noted in proposed Supplementary Material .05 to Rule 511, a specialist unit may have one or more specialists. See supra note 10.

to meet the quoting requirements as prescribed by Rule 1014, this may be considered sub-standard performance. The Exchange proposes a process that would allow specialist to meet with Exchange staff regarding their sub-standard performance.

The Exchange proposes in Rule 511(d)(ii) that if the Exchange finds that a specialist unit failed to meet Minimum Performance Standards, it will provide written notice to the unit. The Exchange proposes in Rule 511(d)(iii) that the specialist unit may request and the Exchange may hold an informal meeting with the head specialist and any other appropriate specialist of the specialist unit to discuss the failure to meet minimum standards and to explore possible remedies. The Exchange will give notice of the meeting and no verbatim record will be kept. If, after receiving such notice for the Exchange, the specialist unit refuses or otherwise fails without reasonable justification to meet with the Exchange, the Exchange may refer the matter to the Business Conduct Committee (a standing committee of the Exchange) for the commencement of formal disciplinary proceedings. If the Exchange believes there are no mitigating circumstances that would demonstrate substantial improvement of or reasonable justification for the failure to meet minimum standards, the Exchange may take remedial action pursuant to subparagraph (d)(ii).

The Exchange proposes in Rule 511(d)(ii) that if it finds sub-standard minimum performance by a specialist unit, the Exchange may take the following remedial actions: a) restriction of allocations in additional options (subsection (d)(ii)(A)); b) suspension, termination, or restriction of allocations in one or more options (subsection (d)(ii)(B)); or c) suspension, termination, or restriction of the specialist or specialist unit's registration in general (subsection (d)(ii)(C)). Specialist units or specialists therein may appeal to the Board of Governors from a decision of the Exchange pursuant to subsection (d)(ii)(B) or subsection (d)(ii)(C) by filing the requisite notice of appeal.<sup>21</sup> Minimum Performance Reviews will be conducted at least annually but may be conducted at monthly intervals.

Routine Specialist Performance Evaluations pursuant to proposed Rule 511(c) are conducted at annual (or shorter) intervals to determine whether

specialists have fulfilled performance standards that may include, but are not limited to, trade correction data, exemptive relief data, quality of markets data, proper execution of duties as a specialist unit, competition among market makers and in representing the Exchange as specialist unit, observance of ethical standards, and administrative factors. The Exchange may also consider, when doing these routine evaluations, any other relevant information including, but not limited to, trading data, regulatory history, the number of requests for quote spread parameter relief, how a specialist unit optimizes the submission of quotes through the Specialized Quote Feed as defined in Rule 1080 by evaluating the number of individual quotes per quote block received by the Exchange, and such other factors and data as may be pertinent in the circumstances.

The Exchange may also, but is not required to, conduct Special Circumstance Evaluations pursuant to proposed Rule 511(e) whenever the Exchange feels that circumstances warrant such reviews. These include, but are not limited to, where the Exchange believes that a specialist unit's performance in a particular market situation was so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining efficient, fair and orderly markets. Special Circumstance Evaluations may incorporate the same review methodology and procedures as established for routine Specialist Performance Evaluations or Minimum Performance Reviews. However, Special Circumstance Evaluations may instead or in addition examine such other matters related to a specialist unit's performance as the Exchange deems necessary and appropriate. Special Circumstance Evaluations may be done within six months of new allocations<sup>22</sup> and within four months of transfers of allocations to specialist units.<sup>23</sup>

The Exchange may determine, pursuant to a Rule 511 Special Circumstance Evaluation, that a specialist unit that received a new allocation has not complied with any of the commitments that it made when applying for the options class, including but not limited to commitments regarding capital, personnel and order

flow (subsection (e)(i)(A)); or that the performance of a specialist unit was inadequate after the transfer of one or more options classes or when there has been a material change in the specialist unit (subsection (e)(i)(B)). After the Exchange indicates to the applicable specialist unit why its performance is inadequate, the specialist unit will be afforded thirty days in which to improve its performance. If the specialist unit does not improve its performance, the Exchange may, after written notice, remove and reallocate one or more securities that were allocated to such unit. Specialists units and specialists therein may appeal to the Board of Governors from a decision of the Exchange pursuant to proposed subsection (e)(ii) by filing the requisite notice of appeal.<sup>24</sup>

Additionally, the rules establish limits on the allocation of options to specialist units that fail to perform adequately. By virtue of proposed Rule 511(e)(iii), if a specialist allocation in an option is terminated as a result of a Special Circumstance Evaluation, the specialist unit may not receive an allocation (or re-allocation) in the terminated option or options for a period not to exceed six months. Similarly, by virtue of proposed Rule 511(d)(v), if an allocation is terminated because a specialist exhibits sub-standard performance in terms of best bid and offer or in terms of quoting requirements, such specialist may not receive an allocation (or re-allocation) in the terminated option or options for a period not to exceed six months; and if an allocation is terminated because a specialist unit exhibits sub-standard performance in terms of minimum quoting requirements per Rule 1014, such specialist unit may not receive an allocation (or re-allocation) in the terminated option or options for a period not to exceed twelve months.

As discussed, all specialists and specialist units have the right to appeal from an Exchange decision that was taken pursuant to a Specialist Evaluation or a Special Circumstance Evaluation. Moreover, the rules indicate that the Exchange must provide written notice regarding the lack of adequate performance; and give specialist units an opportunity to discuss performance or improve performance before the Exchange takes remedial action. The Exchange feels that these procedures are fair, reasonable, and uniform for all specialists on the Exchange.<sup>25</sup>

<sup>21</sup> See supra note 15. The Minimum Performance Standards; remedial action by the Exchange if there is a failure to attain such performance standards; and appeal rights therefrom are substantially similar for specialist units and SQTs/RSQTs per Rules 511 and 510, respectively.

<sup>22</sup> For purposes of conformity with the proposed six month period, 90 days is changed to 180 days (six months) in Rule 511(b).

<sup>23</sup> While Special Circumstance Evaluations are optional during the noted four month and six month periods, the Exchange may also conduct independent Minimum Performance Reviews on a monthly basis.

<sup>24</sup> See supra note 15.

<sup>25</sup> In an effort to streamline the specialist evaluation process, and in light of the noted

In Rule 510 (regarding SQTs and RSQTs) and Rule 511 (regarding specialists), the Exchange proposes to eliminate the right to appeal from an Exchange's determination to restrict additional options allocations based on failure to meet minimum performance requirements. The Exchange believes that an appeals process for restriction of allocations or assignments in additional (not currently allocated or assigned) options, which would require a 10 day notice period followed by a potentially lengthy appeals proceeding, is not necessary and indeed may be counterproductive in light of the need to efficiently and timely allocate or assign additional options.

#### Assignment in Options

Rule 507 deals with the process of applying for approval as an SQT or RSQT on the Exchange and assignment of options to SQTs and RSQTs. These are Registered Options Traders that, similarly to other market makers on the Exchange such as specialists, provide depth and liquidity through two-sided quotes in the options in which they are assigned. Rule 1014 discusses, among other things, the quote obligations of market makers and participants on the Exchange.<sup>26</sup> Rule 507 defines the Maximum Number of Quoters ("MNQ") in equity options, which establishes the greatest number of SQT and RSQT assignments that the Exchange may make in a particular class of option. MNQ in equity options is currently set in Commentary .02 to Rule 507 at no more than: Twenty-four market participants (SQTs and RSQTs) for equity options in the top 5% most actively traded options; nineteen market participants for the next 10% most actively traded options; and seventeen

market participants for all other options.<sup>27</sup>

Because the number of assignments that may be made by the Exchange are limited by MNQ, thereby resulting in situations where SQTs and RSQTs may not be able to get assignments that they applied (and may be eligible) for, the Exchange is striving to ensure that option assignments are used to provide liquidity within a reasonable time after assignment. It is for this reason that the Exchange proposes to add new Commentary .01 to Rule 507 to state that within not more than thirty business days after assignment of an option pursuant to this rule, an assigned SQTs or RSQTs shall begin to generate and submit electronic quotations for such option through the Exchange's electronic quotation, execution, and trading system. Quoting requirements are, as previously noted, set forth in Rule 1014.<sup>28</sup> Should an assigned SQT or RSQT not generate electronic quotes within the requisite time frame, the Exchange shall have the ability to terminate the assignment in question after providing written notice to the assigned SQT or RSQT, and make a re-assignment, unless there are exigent circumstances that the Exchange believes may not have allowed timely generation and submission of electronic quotes.<sup>29</sup>

#### Transfer of Allocated Option Classes

Rule 508 deals with agreements between specialist units to transfer one or more options classes that are already allocated by the Exchange to one of such units. This type of process tends to happen most often, and in fact is instrumental to facilitating the orderly transfer and continuation of markets in classes of allocated options, when a

specialist unit significantly changes the scale or breadth of its specialist operation on the Exchange or withdraws from the Exchange.

Currently, Rule 508 states that failure to provide the Exchange with prior notice of an arranged (agreed-upon) transfer of one or more already allocated options classes in accordance with this rule permits the Exchange to reallocate such options classes. The proposed change to Rule 508 states that failure to provide the Exchange prior notice of a transfer in accordance with this Rule, or failure to obtain Exchange approval of a transfer, permits the Exchange to recover the allocated securities and reallocate them. The Exchange believes that this is appropriate given that the Exchange initially makes the allocation of the option class after evaluating the relevant factors, and should continue to have a similar ability to evaluate the propriety of subsequent transfer of the same option class.

Commentary .01 to Rule 508 also currently indicates that no member may effect a change in the floor trading location of any equity option or index option class until forty-five calendar days after final approval of the change by the Exchange has been disseminated to the option floor. The Exchange proposes to delete this provision. The Exchange believes that the forty-five day delay to affect a change is functionally obsolete and no longer necessary, particularly in the current fast-paced trading environment.<sup>30</sup>

Finally, the Exchange is proposing technical, housekeeping rule changes in respect of ensuring conformity of rule language and deleting references that are obsolete or no longer in use. For example, the reference to Registrant is changed to specialist or specialist unit in Rules 508 and 511, and the reference to grant is changed to allocate in Rule 511 for purposes of conformity.<sup>31</sup> The Exchange is proposing to clean up the language of Commentary .02 of Rule 510 by removing reference to initial implementation of the existing rule. The Exchange is also proposing to conform Rule 511 language in light of the consolidation with Rule 515. Thus, reference to Specialist Performance Evaluations and Special Circumstance Evaluations, and reference to factors that may be considered by the Exchange (e.g., evaluations, trade correction data, exemptive relief data) are added to Rule

safeguards built into the Exchange's rules and By-Laws, the Exchange is deleting the formal hearing process that is currently in Rule 511(e) and proposes an informal hearing process in Rule 510 (regarding SQTs and RSQTs) and Rule 511 (regarding specialists).

<sup>26</sup> Rule 1014(b)(ii)(D) states that in addition to the other requirements for ROTs set forth in this Rule 1014, except as provided in sub-paragraph (4) below, an SQT and an RSQT shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned, provided that, on any given day, a Directed SQT ("DSQT") or a Directed RSQT ("DRSQT") (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote two-sided markets in the lesser of 99% of the series listed on the Exchange or 100% of the series listed on the Exchange minus one call-put pair, in each case in at least 60% of the options in which such DSQT or DRSQT is assigned. Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain until the close of that trading day quotations for the lesser of 99% of the series of the option listed on the Exchange or 100% of the series of the option listed on the Exchange minus one call-put pair.

<sup>27</sup> Regarding MNQ procedures in general, see Commentaries .01 to .05 to Rule 507. See also Securities Exchange Act Release No. 60688 (September 18, 2009), 74 FR 49058 (September 25, 2009) (SR-Phlx-2009-82) (order approving modest increase in MNQ levels).

<sup>28</sup> Rule 1014 also sets forth circumstances in which market participants do not have quoting responsibilities. As an example, subsection (b)(ii)(D)(4) states that SQTs, DSQTs, RSQTs and DRSQTs are deemed not to be assigned, and therefore do not have quoting responsibilities, respecting Quarterly Option Series, adjusted option series, and series with an expiration of nine months or greater. Adjusted option series are defined as option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares. See Securities Exchange Act Release No. 61095 (December 2, 2009), 74 FR 64786 (December 8, 2009) (SR-Phlx-2009-99) (notice of filing and immediate effectiveness).

<sup>29</sup> The Exchange has proposed other amendments to Rule 507 at SR-Phlx-2010-145 that should not impact this filing. Should it become necessary, however, the Exchange will propose additional rule text amendments.

<sup>30</sup> The Exchange will notify relevant specialist units, specialists, or members regarding transfer applications pursuant to Rule 508.

<sup>31</sup> This change in terminology conforms it to current usage.

511(b); and reference to Rule 515 is deleted.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>32</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>33</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by updating and making more uniform the evaluation process for specialist units, ensuring timely electronic quotations by SQTs and RSQTs, and consolidating and deleting unnecessary and obsolete rules and processes. The Exchange believes that its rule change proposal does not engender unfair discrimination among specialists, specialist units, SQTs and RSQTs in that it proposes to amend rules and procedures that are equally applicable to all members and member organizations at the Exchange.

### 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2010-153 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-2010-153. 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 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 available publicly. All submissions should refer to File Number SR-Phlx-2010-153 and should be submitted on or before December 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63308; File No. SR-MSRB-2010-15]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Rule D-13, on a Definition of "Municipal Advisory Activities", Rule D-14, on a Definition of "Appropriate Regulatory Agency", and Amendments to Rule D-11 ("Associated Persons"), Rule G-40 on Electronic Mail Contacts, and Form G-40, on Electronic Mail Contacts

November 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 10, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The Board has designated the proposed rule change as concerned solely with the administration of the Board or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as without the provisions of Section 19(b)(2) of the Act. 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 is filing a proposed rule change relating to municipal advisors, consisting of: (i) Amendments to Rule D-11 (definition of "associated persons"); (ii) new Rule D-13 (definition of "municipal advisory activities"); (iii) new Rule D-14 (definition of "appropriate regulatory agency"); (iv) amendments to Rule G-40, on electronic mail contacts, by municipal advisors; and (v) amendments to Form G-40, on electronic mail contacts. The proposed rule change is effective immediately upon filing.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx>, at the MSRB's principal office, and at the Commission's Public Reference Room.

<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

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

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