

submissions should refer to File Number SR-CBOE-2011-081 and should be submitted on or before September 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65234; File No. SR-MSRB-2011-10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Amendments to MSRB Rule G-20 (Gifts and Gratuities) and Related Amendments to MSRB Rule G-8 (Books and Records) and MSRB Rule G-9 (Preservation of Records), and To Clarify That Certain Interpretations by the Financial Industry Regulatory Authority and the National Association of Securities Dealers Would Be Applicable to Municipal Advisors

August 31, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 16, 2011, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "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 proposed amendments to MSRB Rule G-20 (on gifts and gratuities), which would apply the rule to municipal advisors, along with related proposed amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records), and to clarify that certain interpretations by the

Financial Industry Regulatory Authority ("FINRA") of its gifts rule (FINRA Rule 3220) and its predecessor, the National Association of Securities Dealers ("NASD") of its gift rule (NASD Rule 3060), would be applicable to municipal advisors. The MSRB requested that the proposed rule change be made effective on the date that rules defining the term "municipal advisor" under the Exchange Act are first made effective by the Commission.

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/2011-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 Changes

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 Changes

1. Purpose

Existing MSRB Rule G-20. Rule G-20 was adopted by the MSRB to prevent brokers, dealers, and municipal securities dealers ("dealers") from attempting to induce other organizations active in the municipal securities market to engage in business with such dealers by means of personal gifts or gratuities given to employees of the organizations, including, but not limited to, acts of commercial bribery,³ and to help to ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized. The MSRB has interpreted Rule G-20 to preclude the payment by dealers of "excessive or lavish" entertainment or travel expenses of issuer personnel, as follows:⁴

³ See MSRB Notice 2004-17 (June 15, 2004).

⁴ See Rule G-20 Interpretation—Dealer Payments in Connection with the Municipal Securities Issuance Process (January 29, 2007); see also *In the Matter of RBC Capital Markets Corporation*, SEC Rel. No. 34-59439 (Feb. 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G-20 and G-17 for payment of lavish travel and entertainment expenses of city

Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer's municipal securities activities.

Dodd-Frank Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")⁵ authorized the MSRB to establish a comprehensive body of regulation for all municipal advisors.⁶ The Dodd-Frank Act requires the MSRB to adopt rules for municipal advisors that are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.⁷ It also expands the mission of the MSRB to include the protection of municipal entities⁸ and obligated persons, in addition to the protection of investors and the public interest.

Proposed amendments to MSRB Rule G-20. Pursuant to the authority granted to it by the Dodd-Frank Act, the MSRB is proposing the amendments to Rule G-20. Just as the existing rule helps to ensure that dealers' municipal securities activities are undertaken in arm's-length, merit-based transactions in which conflicts of interest are minimized, the MSRB seeks to reduce the potential for conflicts of interest in municipal advisory activities.⁹ The

officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); *In the Matter of Merchant Capital, L.L.C.*, SEC Rel. No. 34-60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings).

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

⁶ "Municipal advisor" is defined in Section 15B(e)(4) of the Exchange Act.

⁷ See Section 15B(b)(2)(C) of the Exchange Act.

⁸ "Municipal entity" is defined in Section 15B(e)(8) of the Exchange Act as "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities."

⁹ MSRB Rule D-13 defines the term "municipal advisory activities" by reference to Section 15B(e)(4)(A) of the Exchange Act (*i.e.*, (i) providing advice to municipal entities or obligated persons on municipal financial products or the issuance of

Continued

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed amendments to Rule G-20 would help to ensure that engagements of municipal advisors, as well as engagements of dealers, other municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of merit and not as a result of gifts made to employees controlling the award of such business. The proposed amendments to Rule G-20 would make the rule applicable to municipal advisors and would:

- Prohibit municipal advisors, in connection with their municipal advisory activities, from, directly or indirectly, making a gift or permitting a gift to be made in excess of \$100 per year to a natural person other than an employee or partner of the municipal advisor, if such gifts are in relation to the activities of the employer of the recipient of the gift;¹⁰
- Provide certain exemptions from the above prohibition, including: (i) occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the municipal

municipal securities and (ii) solicitations of municipal entities on behalf of others).

Section 15B(e)(9) of the Exchange Act defines the term "solicitation of a municipal entity or obligated person" to mean: "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity."

¹⁰ See proposed Rule G-20(a). The "municipal advisory activities" of the municipal advisor covered by the proposed amendments to Rule G-20(a) would include both advice provided to municipal entities and obligated persons and solicitations of municipal entities on behalf of third parties. For example, the proposed rule amendments would apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities and obligated persons for which the municipal advisor is providing advice or seeking to provide advisory services. It would also apply to gifts and entertainment provided by a municipal advisor to employees of municipal entities being solicited by a municipal advisor to award business to a client of the municipal advisor (e.g., employees of a public pension fund who could influence the pension fund's decision award investment advisory business). Even if a municipal advisor is not then engaging in any municipal advisory activities with a municipal entity or obligated person, a gift that could be reasonably viewed as an attempt by the municipal advisor to curry favor with a municipal entity or obligated person for the purpose of becoming engaged to undertake municipal advisory activities at some point in the future also would be covered by the provisions of proposed Rule G-20.

advisor; or (ii) legitimate business functions sponsored by the municipal advisor that are recognized by the Internal Revenue Service as deductible business expenses;¹¹

- Permit contracts of employment or compensation for services rendered by a person other than an employee of the municipal advisor; provided that there is a written agreement¹² between the municipal advisor and the person who is to perform such services, prior to the time of employment or before the services are rendered;¹³
- Remove gifts of reminder

advertising as a permissible exemption from the \$100 gift limit of Rule G-20(a) for municipal advisors and dealers;¹⁴ and

- Clarify that existing FINRA and NASD interpretations of the FINRA and NASD gift rules, respectively,¹⁵ apply to comparable MSRB provisions of Rule G-20 applicable to municipal advisors, with new FINRA interpretations of its gifts rule made applicable to municipal advisors if the MSRB determines that it is appropriate to do so and receives the approval of the Commission. All NASD and FINRA interpretations that would be made applicable to municipal advisors by this proposed rule change are cited in this filing and would be posted on the MSRB Web site, and cited in the MSRB Rule Book, as interpretations of comparable provisions of Rule G-20.

Municipal advisors would not be subject to Rule G-20(d), which relates to non-cash compensation in connection with primary offerings.

Proposed amendments to MSRB Rule G-8 and Rule G-9. The proposed amendments to Rule G-20 would necessitate related amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rules G-8 and G-9 would subject municipal advisors to the same recordkeeping and record retention requirements to which dealers would be subject under amended Rule

G-20. Specifically, the proposed amendments to Rule G-8 would require municipal advisors and dealers to create and maintain records of any gifts referred to in Rule G-20¹⁶ and all agreements for services referred to in Rule G-20 along with the compensation paid as a result of such agreements. The proposed amendments to Rule G-9 would require municipal advisors to preserve the records required to be made pursuant to the proposed amendments to Rule G-8 for six years.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act provides that the rules of the MSRB shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) and Section 15B(b)(2)(C) of the Exchange Act because it would reduce the potential for conflicts of interest in municipal advisory activities. The proposed amendments to Rule G-20 would also help ensure that engagements of municipal advisors, as well as engagements of dealers, municipal advisors, and investment advisers for which municipal advisors serve as solicitors, are awarded on the basis of

¹¹ See proposed Rule G-20(b).

¹² The written agreement must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

¹³ See proposed Rule G-20(c).

¹⁴ See proposed Rule G-20(b). Those gifts would be addressed, instead, by NASD Notice to Members 06-69 (December 2006), which the proposed rule change would make applicable to municipal advisors ("NASD Notice to Members 06-69").

¹⁵ See NASD Notice to Members 06-69; *FINRA Interpretive Letter to Amal Aly, SIFMA (Reasonable and Customary Bereavement Gifts) dated December 17, 2007*; *FINRA Interpretive Letter to Charles Wiegert, NFP Securities dated March 15, 2001*; and *Interpretive Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. dated June 10, 1999*.

¹⁶ The requirement to keep a record of all gifts, including those of business meals and entertainment and sponsored business functions would be a new requirement for dealers, as well as municipal advisors. Those gifts are covered by Rule G-20(b). Previously, only records of gifts covered by Rule G-20(a) were required to be kept.

merit and not as a result of gifts made to employees controlling the award of such business. The proposed amendments to Rules G–8 and G–9 would assist in the enforcement of Rule G–20 by requiring that dealers and municipal advisors create and maintain records of any gifts referred to in Rule G–20 and all agreements for services referred to in Rule G–20, along with the compensation paid as a result of such agreements.

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

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.

While the proposed rule change will affect all municipal advisors, it is a necessary regulatory burden because it hampers practices that can harm municipal entities and their citizens by contributing to the violation of the public trust of elected officials that might allow gifts to influence their decisions regarding the awarding of municipal advisory business. While the proposed rule change may burden some small municipal advisors, any such burden is outweighed by the need to protect their issuer clients.

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

The MSRB 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 Exchange Act since it would apply equally to all municipal advisors and dealers.

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

On February 22, 2011, the MSRB requested comment on draft amendments to Rule G–20.¹⁷ The MSRB received eight comment letters (“Comment Letters”) from the following commenters: (1) Catholic Finance Corporation (“CFC”); (2) Robert Fisher (“Mr. Fisher”); (3) Municipal Regulatory Consulting LLC (“MRC”); (4) National Association of Independent Public Finance Advisors (“NAIPFA”); (5) Public Financial Management (“PFM”); (6) Securities Industry and Financial Markets Association (“SIFMA”); and (7)

WM Financial Strategies (“WM Financial”).

The Comment Letters are summarized by topic as follows:

- *Comment: The draft amendments to Rule G–20 would prohibit payments for ordinary business expenses of municipal advisors, including, but not limited to, rent and salaries.*

Mr. Fisher and PFM stated that a literal reading of the draft amendments to Rule G–20 would restrict payments made by a municipal advisor related to any part of their municipal advisory business, including the payment of rent and the purchasing of supplies. SIFMA noted that it understood why the wording of the gift prohibition for municipal advisors differed from that of the gift prohibition for dealers (*i.e.*, municipal entities do not have municipal advisory activities), but requested that the MSRB clarify that the municipal advisor provision was intended to be interpreted in the same manner as the dealer provision. NAIPFA stated that the proposed amendments would curtail gifts and gratuities given by municipal advisors for the purpose of soliciting municipal advisory business while leaving the rule for dealers unchanged, which would allow such gift giving related to dealer solicitations of municipal securities business.

MSRB Response: The MSRB did not intend for the draft amendments to Rule G–20 to apply to municipal advisors in a different manner than the rule currently applies to dealers. The difference in wording between draft Rule G–20(a)(ii) (applicable to municipal advisors) and Rule G–20(a)(i) (applicable to dealers) was not substantive. However, the MSRB has determined to revise the draft amendments to Rule G–20 to clarify that dealers and municipal advisors are subject to the same gift limits. Those revisions are reflected in the proposed amendments to Rule G–20(a).

For the avoidance of doubt, the proposed amendments to Rule G–20 that are part of the proposed rule change use the word “gift,” rather than “payment” in section (a). Such amendment would clarify that the thing or service of value to be given would have to be an actual gift and not payments and/or costs associated with normal business activities of the municipal advisor or the dealer. Because of the use of the term “gift,” the proposed amendments would remove references to the terms “gratuity” and “gratuities,” which are subsumed within the term “gift.”

- *Comment: The MSRB should clarify that references to “persons” in the rule*

*mean “natural persons,” consistent with previous MSRB interpretive guidance.*¹⁸

This change would have the effect of permitting charitable contributions without violation of the rule.

MRC requested that the MSRB speak directly to the issue of charitable contributions by incorporating language addressing such concerns in Rule G–20, or in guidance applicable to either Rule G–20 or Rule G–17, that charitable contributions are not gifts for purposes of Rule G–20 and are not covered by Rule G–20 because Rule G–20 only covers gifts to natural persons. MRC also stated that it is unclear if certain charitable (or similar) contributions might constitute an unfair practice and thereby cause a municipal advisor making the contribution to violate Rule G–17. NAIPFA also requested guidance and clarification regarding charitable contributions that are made either as a result of a solicitation from an employee or elected official of a municipal entity or with a view toward influencing the decision-making of an employee or elected official of a municipal entity.

MSRB Response: The MSRB believes that the concerns raised by MRC will be addressed by amendments to the rule that would change the term “persons” to “natural persons.” Such amendment would clarify that Rule G–20 covers gifts to individuals and not organizations. In response to the concerns raised by MRC and NAIPFA, the Board has previously determined that the occasional pay to play problems that might be associated with the solicitation of charitable contributions by issuers do not outweigh the benefits of such contributions and that such restrictions would have a negative impact on charitable giving. The proposed rule change does not address gifts under Rule G–17. The MSRB will take MRC’s comment regarding the potential applicability of Rule G–17 to gifts under advisement for when it considers future interpretations of Rule G–17.

- *Comment: The draft amendments to Rule G–20 should include an exception to the prohibition of gifts, grants, loans, and other financial assistance or services by a section 501(c)(3) organization within its exempt purpose for the benefit of other nonprofit corporations.*

¹⁸ The MSRB has previously stated that, for purposes of Rule G–20, the term “person” refers only to a natural person and that Rule G–20 is intended to discourage municipal securities professionals from attempting to induce individual employees from acting in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. See Rule G–20; Interpretive Letter, “Person” (March 19, 1980).

¹⁷ See MSRB Notice 2011–16 (February 22, 2011) (“Notice”).

CFC stated that the proposed rulemaking should include an exception to the prohibition on payments for any thing of value donated by a municipal advisor that is a nonprofit entity as previously determined by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, so long as such donation is within the exempt purpose of such entity.

MSRB Response: The MSRB has determined to use the term “natural person,” which has the effect of permitting gifts to be made to organizations.

• *Comment: The draft amendments to Rule G–20 should prohibit gift giving and/or provide an annual cap for de minimis gifts in order to prevent pay to play activities under the rule.*

Mr. Fisher suggested a general prohibition on gifts under draft Rule G–20(a), subject to a \$100 safe harbor for *de minimis* gifts. NAIPFA recommended a prohibition on occasional gifts and, along with WM Financial, suggested an annual gift or gratuity maximum of \$100 with the aggregate of all gifts, gratuities, and entertainment not to exceed \$250 annually.

MSRB Response: Rule G–20 is intended to prevent commercial bribery and certain activities, such as excessive gift giving, from influencing dealer and municipal advisor selection. The purpose of the proposed amendments to Rule G–20 is only to extend the existing rule to municipal advisors. The proposed amendments would not impose more stringent limitations at this time. However, should the MSRB become aware of abusive behavior in this area, it might determine to revisit these comments.

• *Comment: The draft amendments should apply to gifts to family members of issuer personnel because such gifts can be problematic.*

NAIPFA stated that the proposed amendments to Rule G–20 should apply to gifts and gratuities given to family members of issuer personnel.

MSRB Response: The MSRB has previously stated that the intent of the rule is not to restrict social relationships that do not suggest impropriety.¹⁹ The MSRB believes that an expansion of the rule to family members, as suggested by NAIPFA, would unduly burden dealers and municipal advisors. The MSRB notes, however, that both the existing rule and the proposed amendments prohibit indirect, as well as direct, gifts. A gift to a family member of someone in a position to award business to a municipal advisor would violate the rule if it was indirectly a gift to the

person awarding the business and it violated the rule's limits.

• *Comment: The draft amendments to Rule G–8 (on books and records) are burdensome and unnecessary because they would require municipal advisors to collect all third-party employment and service agreements of any kind. In addition, the draft amendments to Rule G–8 do not require reporting of gifts made under existing Rule G–20(b) or the draft amendments to Rule G–20(b).*

PFM stated that the draft recordkeeping requirements increase the data-collection burden of municipal advisors to collect all third party employment and service agreements of any kind. NAIPFA stated that the fact that existing Rule G–8 and the draft amendments to Rule G–8 do not require the reporting of gifts made under Rule G–20(b) exacerbates the potential for pay to play as it relates to such “occasional gifts” that are permitted under the rule.

MSRB Response: The MSRB has determined not to make changes to Rule G–20 as a result of PFM's comment in order to maintain consistency of the recordkeeping requirements of the rule for dealers and municipal advisors. The MSRB notes that records of employment agreements need only be kept if a municipal advisor is employing some other person's employee, such as an obligated person client's employee. The MSRB also notes that the recordkeeping requirements would facilitate municipal advisor compliance with proposed Rule G–20 and assist enforcement agencies in monitoring compliance with the rule.

The MSRB has considered NAIPFA's comment and has determined to require municipal advisors and dealers to maintain records of all gifts provided under Rule G–20. Rule G–8 does not currently require recordkeeping of gifts that are described in Rule G–20(b) (e.g., tax deductible business meals and entertainment).²⁰ While gifts provided under Rule G–20(b) must not be so frequent or so extensive as to raise any question of propriety, the MSRB believes records of such gifts would assist with enforcement efforts. The proposed amendments would likely not be burdensome because, in most cases, records are already kept of such gifts when reimbursement is sought, even if only for Federal income tax purposes. Therefore, from a practical standpoint, the amendments would merely add a requirement that records of such gifts be kept even though reimbursement is not sought. Accordingly, the recordation of all gifts that are given or permitted to be

given under Rule G–20 would be required under Rule G–8(a)(xvii)(A) as it applies to dealers and proposed Rule G–8(h)(ii) as it applies to municipal advisors.

• *Comment: The MSRB should confirm that (i) guidance under existing Rule G–20 applies to all provisions of the proposed rulemaking and (ii) relevant FINRA guidance would be applicable to the rule as amended as it has previously applied to the existing rule.*

SIFMA requested that the MSRB reiterate its intent to apply relevant FINRA guidance to the proposed amendments. SIFMA also requested that the MSRB confirm that existing guidance under Rule G–20 applies to all provisions of the proposed rule change.

MSRB Response: The MSRB has previously provided that FINRA and NASD interpretations of comparable provisions of their gifts rules will apply to dealers unless otherwise specified by the MSRB.²¹ While the MSRB believes that the existing FINRA and NASD interpretations should also be applicable to municipal advisors, new FINRA interpretations of its gifts rule will not automatically be applicable to municipal advisors. New FINRA interpretations of its gifts rule will be made applicable to municipal advisors if the MSRB determines that it is appropriate to do so and receives the approval of the SEC. All NASD and FINRA interpretations that would be made applicable to municipal advisors by this proposed rule change are cited in this filing and would be posted on the MSRB Web site, and cited in the MSRB Rule Book, as interpretations of comparable provisions of Rule G–20.

The MSRB intends that existing MSRB interpretive guidance under Rule G–20 would be equally applicable to Rule G–20, as amended by the proposed rule change.

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

Within 45 days of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

¹⁹ See File No. SR-MSRB-77-12.

²⁰ Records of gifts under Rule G–20(a) are required to be kept.

²¹ See File No. SR-MSRB-2005-02.

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 Exchange Act. Interested persons are also invited to submit views and arguments as to whether they can effectively comment on the proposed rule change prior to the date of final adoption of the Commission's permanent rules for the registration of municipal advisors. 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-MSRB-2011-10 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-MSRB-2011-10. 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 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 MSRB's offices.

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-MSRB-2011-10 and should be submitted on or before September 28, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.²²

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65228; File No. SR-Phlx-2011-119]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Reversal and Conversion Strategies

August 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that, on August 18, 2011, NASDAQ OMX PHLX LLC ("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 establish a fee cap on equity options transactions on certain reversals and conversion strategies. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at www.sec.gov.

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 incentivize market participants by capping option transaction fees related to reversal and conversion strategies to encourage trading on the Exchange. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

The Exchange proposes to cap Specialist,³ Registered Option Trader ("ROT"),⁴ SQT,⁵ RSQT,⁶ Professional,⁷ Broker-Dealer and Firm option transaction fees in Multiply Listed Options⁸ at \$500 per day for reversal and conversion strategies which are executed on the same trading day in the same options class ("Reversal and Conversion Cap"). The Reversal and Conversion Cap will only apply to executions occurring on either of the two days preceding the standard options expiration date, which is typically the third Thursday and Friday of every

³ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁴ A Registered Options Trader ("ROT") includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

⁵ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁶ An RSQT is defined Exchange Rule 1014(b)(ii)(B) as 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.

⁷ The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

⁸ For purposes of this filing, a Multiply Listed security means an option that is listed on more than one exchange.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.