

contributions and prohibitions on municipal advisory activities); (ii) proposed amendments that would make conforming changes to MSRB Rules G–8 (on books and records), G–9 (on preservation of records), and G–37 (on political contributions and prohibitions on municipal securities business); (iii) proposed Form G–37/G–42 and Form G–37x/G–42x; and (iv) a proposed restatement of a Rule G–37 interpretive notice issued by the MSRB in 1997. Notice of the proposed rule change was published in the **Federal Register** on September 9, 2011.³ The Commission received no comments on the proposed rule change. On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–12).⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65397; File No. SR–MSRB–2011–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of Proposed Rule G–36, on Fiduciary Duty of Municipal Advisors, and a Proposed Interpretive Notice Concerning the Application of Proposed Rule G–36 to Municipal Advisors

September 26, 2011.

On August 23, 2011, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b–4 thereunder,² consisting of proposed Rule G–36 (on fiduciary duty of municipal advisors) and a proposed interpretive notice concerning the application of proposed Rule G–36 to municipal advisors. Notice of the proposed rule change was published in the **Federal Register** on September 12,

2011.³ The Commission received no comments on the proposed rule change. On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–14).⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65399; File No. SR–Phlx–2011–111]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change Requesting Permanent Approval of the Pilot Program Permitting NASDAQ OMX PHLX to Receive Inbound Routes by NOS

September 26, 2011.

I. Introduction

On August 8, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change requesting permanent approval of the Exchange’s pilot program to permit the Exchange to accept certain inbound orders that Nasdaq Options Services, LLC (“NOS”) routes from Nasdaq Options Market (“NOM”). The proposed rule change was published for comment in the **Federal Register** on August 19, 2011.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Exchange Rule 985(b) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under

Section 19(b) of the Exchange Act.⁴ NOS is a broker-dealer that is a member of the Exchange, and currently provides to members of The NASDAQ Stock Market LLC (“Nasdaq”) that are NOM participants optional routing services to other market centers.⁵ NOS is owned by The NASDAQ OMX Group, Inc. (“NASDAQ OMX”), which also owns three registered securities exchanges—Nasdaq, the Exchange, and NASDAQ OMX BX, Inc.⁶ Thus, NOS is an affiliate of each of these exchanges. Absent an effective filing, Exchange Rule 985(b) would prohibit NOS from being a member of the Exchange.

On July 17, 2008, in connection with the acquisition of the Exchange by NASDAQ OMX, the Commission approved an affiliation between the Exchange and NOS for the limited purpose of permitting NOS to provide routing services for Nasdaq for orders that first attempt to access liquidity on Nasdaq’s system before routing to the Exchange, subject to certain other limitations and conditions.⁷ On February 26, 2010, the Exchange filed an immediately effective proposed rule change to modify the conditions for the affiliation between NOS and the Exchange, to permit the Exchange to receive certain orders routed by NOS from NOM without first checking the NOM book for liquidity on a one-year pilot basis.⁸ Specifically, the Exchange proposed to permit NOS to route from NOM Exchange Direct Orders and orders in NOM Non-System Securities (including Exchange Direct Orders).⁹

¹ 15 U.S.C. 78s(b).

² NOS operates as a facility of Nasdaq that provides outbound routing from NOM to other market centers, subject to certain conditions. See NOM Rules Chapter VI, Section 11(e).

³ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (“Phlx Approval Order”). See also Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

⁴ See Phlx Approval Order, 73 FR at 42887.

⁵ See Securities Exchange Act Release No. 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR–Phlx–2010–36) (“Phlx Routing Pilot Release”). The inbound routing pilot was subsequently extended and is set to expire on November 25, 2011. See Securities Exchange Act Release Nos. 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011) (SR–Phlx–2011–16); and 65140 (August 16, 2011) 76 FR 52374 (August 22, 2011) (SR–Phlx–2011–116).

⁶ NOS provides to NOM participants routing services to other market centers. Pursuant to Nasdaq’s rules, NOS: (1) Routes orders in options currently trading on NOM, referred to as “System Securities;” and (2) routes orders in options that are not currently trading on NOM (“Non-System Securities”). See NOM Rules, Chapter VI, Section 1(b) and 11. When routing Non-System Securities, NOS is not regulated as a facility of Nasdaq, but as a broker-dealer regulated by its designated

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³ See Securities Exchange Act Release No. 65255 (September 2, 2011), 76 FR 55976.

⁴ See MSRB Notice 2011–51 (September 12, 2011).

⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 65282 (September 7, 2011), 76 FR 56254.

⁴ See MSRB Notice 2011–51 (September 12, 2011).

⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 65135 (August 15, 2011), 76 FR 52030 (“Notice”).