

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

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[FR Doc. 2021-11078 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91958; File No. SR-MSRB-2021-03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to MSRB Rule A-8 and the By-Laws of the Municipal Securities Rulemaking Board To Update Descriptions of Board Rulemaking Processes and Eliminate Redundant or Obsolete Provisions

May 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 2021 the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule A-8, relating to rulemaking procedures, and parallel amendments to Article 8 of the By-Laws of the Municipal Securities Rulemaking Board (“Bylaws”), which reproduces MSRB Rule A-8 (the “proposed rule change”). The MSRB has designated the proposed rule change as “concerned solely with the administration of the self regulatory organization” under Section 19(b)(3)(A)(iii) of the Act ³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. As described below, the proposed rule change would update

descriptions of Board rulemaking processes and eliminate redundant or obsolete provisions.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MSRB rulemaking is governed by Section 19 of the Exchange Act ⁵ and Rule 19b-4 thereunder, which describe the processes self-regulatory organizations must follow to file proposed rule changes with the Commission. MSRB Rule A-8 reflects, and to some extent incorporates, these requirements and includes provisions that describe Board processes for complying with them. The proposed rule change is intended to update these provisions and reduce unnecessary complexity, as follows.

Eliminating Unnecessary Descriptions of Statutory Requirements

Section (a) of MSRB Rule A-8 notes the statutory requirements with which the Board must comply when it adopts rules and also restates the statutory authority granted to the Board in Section 15B(b) of the Exchange Act.⁶ While referencing the Board’s statutory authority in section (a) is useful to provide context for what follows, the more detailed description adds unnecessary length and complexity. The proposed rule change streamlines the section by deleting the detailed description but does not change the substance of the rule. The proposed rule change further improves the readability of section (a) by moving the sentence

describing who must sign rule filings—a separate topic—into a new section (b).

Removing Outdated or Obsolete References

Current section (b) of MSRB Rule A-8 (section (c) in the proposed rule change) notes that the Board may “render or cause to be rendered advisory opinions and interpretations of rules of the Board at the request of any interested person.”⁷ The proposed rule change removes the reference to “advisory opinions,” a term that the Board once used, but no longer uses, to describe certain interpretations. Removing this reference would eliminate the potential for confusion about the meaning of the term without limiting the kinds of interpretive and other materials relating to rulemaking that the Board may issue.⁸

In addition, because the Board may interpret its rules on its own initiative, in addition to upon request, the proposed rule change removes the reference to “the request of any interested person.” Finally, the proposed rule change replaces the words “render” and “rendered” in the first sentence with “issue” and “issued” and revises the second sentence to say that interpretations shall “be consistent with,” rather than “represent,” the Board’s intent in adopting the rules being interpreted. The Board believes that the new phrasing is clearer.

Current section (c) of MSRB Rule A-8 provides that the Board may approve procedures relating to the administration of MSRB rules pursuant to MSRB Rule A-4(d), which describes requirements for taking Board action without a meeting. Current Rule A-8(c) also provides that such procedures can take effect no earlier than 10 business days after publication and that regulated entities are subject to these procedures in the same manner as they are subject to the rules of the Board.

Adopted at a time when the Board’s rules required the Board to approve changes to Board rules at a meeting of the Board (rather than through action without a meeting), Rule A-8(c) permitted the Board to approve minor changes to an MSRB form, for example, without a meeting. Because the Board’s

⁷ The Board is currently engaged in a retrospective review of the catalogue of interpretive guidance in its rule book. The multi-year initiative is intended to streamline and modernize the rule book by clarifying, amending and/or retiring guidance that no longer achieves its intended purposes. See MSRB Notice 2021-02 (February 11, 2021).

⁸ Depending on its substance, an interpretation may be deemed to be a proposed rule change pursuant to Exchange Act Rule 19b-4, in which case it must be filed with the Commission.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

⁵ 15 U.S.C. 78s.

⁶ 15 U.S.C. 78o-4(b).

rules have for some time allowed it to take any permissible action, including actions relating to rulemaking, without a meeting,⁹ this section is obsolete and the proposed rule change deletes it.

Better Reflecting Current Transparency Practices

Section (d) of MSRB Rule A-8 directs the Board to establish procedures to provide “access by all interested persons to rules of the Board and other official Board action.” As required by Exchange Act Rule 19b-4(m)(1),¹⁰ the Board posts and maintains a complete version of its rules on its website available for the public to access. The proposed rule change amends section (d) to mirror that requirement and current practice.

Bylaws

Article 8 of the Bylaws reproduces MSRB Rule A-8. Accordingly, the proposed rule change amends the Bylaws to mirror amended MSRB Rule A-8.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)¹¹ and 15B(b)(2)(I)¹² of the Exchange Act.

Section 15B(b)(2) 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)(I) of the Exchange Act provides that MSRB rules shall “provide for the operation and administration of the Board. . . .”

Statutory Basis for Proposed Amendments To Eliminate Unnecessary Descriptions of Statutory Requirements

The proposed amendment to MSRB Rule A-8(a) that deletes the detailed

description of the Board’s statutory authority is consistent with Section 15B(b)(2) of the Exchange Act, which grants that authority. As amended, MSRB Rule A-8(a) will continue to state, as Section 15B(b)(2) does, that the Board shall propose and adopt rules to effect the purposes of the Exchange Act. Because the Board remains subject to the detailed description of the Board’s statutory authority in Section 15B(b)(2) of the Exchange Act, it is unnecessary, and potentially confusing, to duplicate or restate that description in the rule.

In addition, both the proposed amendment to MSRB Rule A-8(a) that deletes the detailed description of the Board’s statutory authority and the amendment to MSRB Rule A-8(a) that moves the last sentence into a new subsection are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. MSRB Rule A-8 is an administrative rule that describes the Board’s processes for carrying out its statutory rulemaking responsibilities. Improving the readability of the rule should enhance the transparency of those processes.

Statutory Basis for Proposed Amendments That Remove Outdated or Obsolete References

The proposed amendments to current section (b) (section (c) in the proposed rule change) of MSRB Rule A-8 that update the description of the Board’s process for interpreting its rules are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. These amendments should improve transparency about Board processes by aligning the rule more closely to the Board’s current practices.

The proposed amendment to delete current section (c) of MSRB Rule A-8 is also consistent with Section 15B(b)(2)(I) of the Exchange Act for the same reason. While section (c) provided for the operation and administration of the Board because it provided a Board process for the Board to approve certain procedures, that process is now obsolete. Deleting it from the rule should improve transparency and reduce the potential for confusion about the administrative processes the Board follows to take action related to rulemaking.

Statutory Basis for Proposed Amendments To Better Reflect Current Transparency Practices

The proposed amendments to section (d) of MSRB Rule A-8 are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for

the operation and administration of the Board. Specifically, these amendments update the description of how the Board provides access to its rules. Updating that description to more closely align with current practice and the requirements of Exchange Act Rule 19b-4(m)(1) should enhance clarity about Board processes.

Statutory Basis for Proposed Amendments to Bylaws

The proposed amendments to the Bylaws are consistent with Section 15B(b)(2)(I) of the Exchange Act because they provide for the operation and administration of the Board. Specifically, the proposed amendments ensure that the Bylaws reflect, and are consistent with, the change to MSRB Rule A-8.

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

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹³ The proposed rule change relates only to the administration of the Board and would not impose or alter requirements on dealers, municipal advisors or others. Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4 thereunder.¹⁵ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

⁹ MSRB Rule A-4(d) provides that action by the Board may be taken without a meeting by unanimous written consent. As the Board noted when it last amended MSRB Rule A-4(d), “[t]he Board takes action without a meeting infrequently, generally when a matter requires prompt attention in between scheduled meetings and circumstances preclude convening a special meeting.” Exchange Act Release No. 89998 (September 25, 2020); 85 FR 62001, 62002 (October 1, 2020); File No. SR-MSRB 2020-05.

¹⁰ 17 CFR 240.19b-4(m)(1).

¹¹ 15 U.S.C. 78o-4(b)(2).

¹² 15 U.S.C. 78o-4(b)(2)(I).

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2021-03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MSRB-2021-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2021-03 and should be submitted on or before June 16, 2021.

For the Commission, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
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[FR Doc. 2021-11084 Filed 5-25-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91960; File No. SR-Phlx-2021-31]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Equity 7, Section 3

May 20, 2021.

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 May 12, 2021, Nasdaq 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 amend the Exchange's pricing schedule at Equity 7, Section 3, as described further below.

The Exchange originally filed the proposal pricing change on May 3, 2021 (SR-Phlx-2021-29). On May 12, 2021, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its pricing schedule, at Equity 7, Section 3, to make a change to its fees for routing of orders using the SCAR routing option in all securities. Specifically, the Exchange proposes to lower the \$0.0025 per share executed credit that is given to a member that enters an order in any of the three tapes using the "SCAR" routing option³ which ultimately executes on Nasdaq BX ("BX").

BX recently revised its pricing schedule to lower its existing credits.⁴ Currently, all credits provided to members on BX are lower than \$0.0025 per share executed. As a result, the Exchange is proposing to lower its existing \$0.0025 per share credit to \$0.0016 per share executed for SCAR orders that execute on BX in order to better align this amount with the credit amount provided by BX on its fee schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange's proposed changes to its SCAR routing rebate are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction

³ Pursuant to Equity 4, Section 3315(a)(1)(A)(x), "SCAR" is a routing option under which orders will check the System for available shares and simultaneously route to BX and Nasdaq in accordance with the System routing table. If shares remain unexecuted after routing, they are posted on the book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

⁴ Securities Exchange Act Release No. 91639 (April 22, 2021), 80 FR 22500, (April 28, 2021).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.