

a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or BDC or a principal underwriter for any registered open-end investment company, registered UIT, or registered face-amount certificate company or as investment adviser of an ESC. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person.

Applicants state that Wells Fargo Bank is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them and other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants engaging in Fund Service Activities. Applicants also state (i) None of the current or former directors, officers, or employees of the Applicants (other than Wells Fargo Bank) had any knowledge of, or had any involvement in, the conduct alleged in the Complaint to have constituted the violations that provided a basis for the Injunction; (ii) the personnel at Wells Fargo Bank who were involved in the conduct that

constituted the violations that provided a basis for the Injunction have had no, and will not have any future, involvement in providing Fund Service Activities to the Funds on behalf of the Applicants or other Covered Persons; and (iii) because the personnel of the Applicants (other than Wells Fargo Bank) did not have any involvement in the alleged misconduct, shareholders of Funds that received Fund Service Activities from the Applicants were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser, depositor or principal underwriter.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the Funds they serve and the Funds' shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, describing the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with the information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies, BDCs and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect more than 1600 employees that are involved in those activities.

7. Applicants state that Applicants and certain other affiliated persons of the Applicants have previously received orders under section 9(c) of the Act, as the result of conduct that triggered section 9(a), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from December 9, 2011, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-32169 Filed 12-14-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law. 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, December 19, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items

listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Monday, December 19, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings; and

An adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: December 12, 2011.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2011-32219 Filed 12-20-11; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65689A; File No. SR-Phlx-2011-142]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Modify Its Co-Location Fee Schedule Regarding Low Latency Network Connections; Correction

AGENCY: Securities And Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** of November 10, 2011 concerning a Proposed Rule Change by NASDAQ OMX PHLX LLC to Modify its Co-Location Fee Schedule Regarding Low Latency Network Connections; The document contained a typographical error in the heading.

FOR FURTHER INFORMATION CONTACT:

Daniel T. Gien, Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551-5747.

Correction:

In the **Federal Register** of November 10, 2011, in FR Doc. 2011-29110, on page 70187, correct the heading to read as noted above.

Dated: December 9, 2011.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2011-32132 Filed 12-14-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65924; File No. SR-Phlx-2011-167]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Permit Fee

December 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on November 28, 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 amend the Exchange's Fee Schedule to waive Permit Fees for existing Exchange members or member organizations that were members on the Exchange prior to the initiation of PSX and have since determined to commence an equities business.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the waiver of Permit Fees to Exchange members or member organizations that were members on the Exchange prior to the initiation of PSX and have since determined to commence an equities business. The Exchange continues to seek to encourage members to trade on NASDAQ OMX PSX ("PSX")³ under a market participant identifier ("MPID")⁴ registered to the member or member organization.

Currently, the Exchange assesses members and member organizations who are transacting business on the Exchange a Permit Fee of \$1,100 per month.⁵ A member or member organization is assessed the \$1,100 monthly Permit Fee if that member or member organization: (1) Transacts its option orders in its assigned Phlx house account in a particular month; (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common ownership.⁶ Members who are not transacting business on the Exchange are assessed a Permit Fee of \$7,500 per month. A member or member organization is assessed the \$7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) Not a PSX Participant;⁷ or not engaged in an options business at the Exchange in a particular month. In

³ PSX is the Exchange's cash equities market electronic trading platform.

⁴ An MPID is a four-letter code used by a member to categorize its trading activity for a specific purpose.

⁵ The Exchange recently filed to amend its Permit Fees to \$2,000 for members transacting business on the Exchange. The rule text of Exhibit 5 reflects the text of that currently effective filing which will be operative on January 3, 2012, in part. See SR-Phlx-2011-166.

⁶ For purposes of the Permit Fee, "common ownership" shall be defined as at least 75% common ownership between the member organizations.

⁷ Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. See Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR-Phlx-2010-54).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.