

securities to cover short positions which have not been covered by participants within ninety days. Under the buy-in procedures, once a short position has aged beyond ninety calendar days DTC will broadcast to participants that have long positions in the security an Invitation to Cover Short Request ("ICSR") message using the Participant Terminal System ("PTS") operated by DTC.<sup>5</sup> DTC will issue the invitations at premiums above market value on a sliding scale set according to the following table:

SHORT POSITION VALUE  
[Market Value]

Minimum	Maximum	Premium Percent	Maximum Possible Premium
\$1	\$50,000	12	\$6,000
50,001	100,000	8	8,000
100,001	300,000	5	15,000
300,001	500,000	3	15,000
500,001	( <sup>1</sup> )	2	( <sup>2</sup> )

<sup>1</sup> Up.

<sup>2</sup> Unlimited.

If DTC is unsuccessful in finding a seller through the ICSR function, DTC will contact by telephone participants with long positions in the security. DTC may elect to use the services of a broker to obtain the securities at a price not to exceed the current market value plus the premium based upon the value of the short position.

If DTC is able to buy-in some or all of the securities needed to cover a participant's short position, DTC will: (1) Credit the securities to the participant's account, (2) reduce the short position charge by the amount of the purpose price of the securities together with the expense of the cover transaction including any brokerage fee or other administrative expense, and (3) if the short position has been eliminated entirely, credit the account of the participant with the balance, if any, of the short position charge.

## II. Discussion

Section 17A(b)(3)(F)<sup>6</sup> requires that the rules of a clearing agency be designed to assure the safeguarding of

<sup>5</sup> ICSR is the DTC service that enables DTC participants having short positions to invite DTC participants with long positions in the same or similar securities to tender securities to the participants with the short positions. Under DTC's buy-in procedures, DTC will initiate the ICSR procedures. For further discussion of ICSR, refer to Securities Exchange Act Release Nos. 26896 (June 5, 1989), 54 FR 25185 [File No. SR-DTC-89-07] (order approving rule change establishing ICSR procedures) and 27586 (January 4, 1990), 55 FR 1132 [File No. SR-DTC-89-18] (order approving rule change amending certain ICSR procedures).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's rule change meets these requirements because it establishes additional procedures to eliminate aged short positions and therefore helps to protect DTC against risk.

DTC's procedures are modelled on existing DTC procedures used to eliminate short positions of participants whose DTC accounts have been closed.<sup>7</sup> DTC's rule change also is in response to concerns raised by the Federal Reserve Bank of New York urging DTC to take additional steps to eliminate aged short positions. The Federal Reserve Bank of New York has expressed concern about DTC continuing to give long position credits to its participants where such credits are not supported by securities in inventory.

The proposal will permit DTC to take affirmative steps to reduce the outstanding short positions and the risks associated with such short positions. Under DTC's procedures, participants are obligated to cover their short positions immediately. DTC participants are assessed a daily charge of 130% of the market value of the security as an incentive for the participant to cover the short position as soon as possible and as a cushion to protect DTC in the event of a sharp rise in the market price of the security.<sup>8</sup> By assessing a 130% daily charge to short positions in a participant's account, DTC will limit its risk of loss to instances when there is a rise in the market price of the security above 130%. The buy-in procedures will limit further DTC's risk of loss by permitting DTC to use the short position charge to take affirmative action to buy-in securities to cover short positions older than ninety days.

## III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-95-01) be, and hereby is, approved.

<sup>7</sup> Securities Exchange Act Release No. 33261 (November 30, 1993), 58 FR 64626 [File No. SR-DTC-92-11] (order approving a proposed rule change relating to the elimination of short positions in a retired participant's account).

<sup>8</sup> Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185 [File No. SR-DTC-89-07] (order approving a proposed rule change concerning invitations to tender to cover short positions).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35846; File No. SR-MSRB-95-9]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Suitability, Transactions and Discretionary Accounts

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, notice is hereby given that on June 1, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR-MSRB-95-9). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 amendments to rule G-19 on suitability of recommendations and transactions and discretionary accounts. In April 1994, the Commission approved an amendment designed to strengthen rule G-19. The proposed rule change makes technical and clarifying changes to rule G-19 concerning discretionary accounts. The Board requests that the Commission set the effective date for 30 days after filing.

### 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 Board 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 Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1994).

most significant aspects of such statements.

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

On April 7, 1994, the Commission approved an amendment to rule G-19, on suitability, designed to strengthen the rule.<sup>1</sup> As part of that amendment, the language of section (c) regarding suitability of recommendations was amended to ensure that in making a recommendation to customers, dealers must have reasonable grounds, based upon information about the security as well as the customer, for believing that the recommendation is suitable.

Section (d) of rule G-19 requires dealers effecting transactions for discretionary accounts to have prior written authorization and to make a suitability determination regarding the transaction, unless the transaction is specifically directed by the customer. A review of rule G-19 has indicated that a technical amendment to section (d) is necessary to correct a cross reference to the new language of section (c). The proposed rule change also clarifies the language of section (d) to ensure that dealers understand their duty to make a suitability determination before executing a transaction for a discretionary account unless the transaction is specifically directed by the customer without any recommendation having been made.

The Board believes the proposed rule change is consistent with section 15(b)(2)(C) of the Act which provides that the Board's rules:

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

The proposed rule clarifies the responsibility of dealers to make suitability determinations before executing transactions for discretionary accounts and therefore the Board believes it will protect investors and the public interest.

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

The Board 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*

The Board has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on June 2, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a "non-controversial filing" because it makes technical and clarifying changes to an existing MSRB rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No.

SR-MSRB-95-9 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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[Release No. 34-35848; File No. SR-MSRB-95-7]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fees for Backlog Document Collections of its Official Statement/Advance Refunding Document Subsystem of the Municipal Securities Information Library**

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-95-7). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 herewith a proposed rule change to establish a price of \$7,000 (plus delivery or postage charges) for its 1994 document collection relating to its Official Statement/Advance Refunding Document ("OS/ARD") subsystem of the Municipal Securities Information Library ("MSIL") system (the "1994 backlog fee").<sup>1</sup> The collection consists of imaged documents on magnetic tapes. The proposed 1994 backlog fees are structured to defray the Board's dissemination costs. This fee structure is consistent with the Board's MSIL fee policy, which is that the Board does not expect or intend to make a profit from the MSIL system, and reviews the MSIL

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> Municipal Securities Information Library and MSIL are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

<sup>1</sup> See Securities Exchange Act Release No. 33869 (April 7, 1994) 59 FR 17632.