

information will be provided upon request."

The change to rule G-15(a)(i)(C)(3)(f) will require that if a security is unrated by a nationally recognized statistical rating organization, a disclosure to that effect be made. The Commission believes that this disclosure will alert customers that they may wish to obtain further information or clarification from their dealer.

The change to rule G-15(a)(i)(C)(1)(a) will require dealers to put the primary revenue source for revenue bonds on the confirmation (e.g., project name) and delete the language requiring disclosure of the primary revenue source "if necessary for a materially complete description of the securities." The Commission believes that requiring disclosure of the primary revenue source of revenue bonds on the confirmation will help ensure that customers receive important information about the purpose and source of payment of revenue bonds.

The change to rule G-15(a)(i)(C)(1)(b) will require dealers always to identify the additional obligor on the confirmation or indicate "multiple obligors" if there is more than one additional obligor. The Commission believes this will simplify and clarify the intent of the rule. Also, the rule change will clarify that, if a letter of credit is used, the identity of the bank issuing the letter of credit must be noted.

The rule change will delete both the "limited tax" and the "ex-legal" designations of certificates. The "limited tax" designation is no longer necessary because the meaning of this "limited tax" designation has become ambiguous as various states have implemented a variety of tax limitation measures. The "ex-legal" delivery designation is no longer necessary because of the high percentage of book-entry-only securities in the market and the movement away from physical delivery of certificates which included a copy of the legal opinion.

The rule change will retain the specific confirmation requirements for zero coupon bonds, including disclosure that the interest rate is 0% and, if the securities are callable and available in bearer form, a statement to that effect which can be satisfied by the following legend: "No periodic payments—callable below maturity value without prior notice by mail to holder unless registered."

In addition, the change to rule G-15(a)(i)(A)(6)(h) will require that the amount of any premium paid over accreted value for callable zero coupon

bonds be included on confirmations.⁷ The Commission believes it is important for customers to know that zero coupon securities may be affected by an early call and that a premium over the accreted value is being paid in the purchase price.

Rule G-15(a)(i)(A)(6)(g) will clarify that the first interest payment date is required on the confirmation only in those cases in which it is necessary for the calculation of final money, so as not to be ambiguous as to whether the first interest payment date must be included on the confirmation in all instances in which there is no regular semi-annual interest payment, or only if the first payment date is necessary for purposes of calculation of final monies. It would, for example, not be required for transactions in the issue occurring after the first interest payment date.⁸

The change to rule G-15(a)(i)(A)(5)(d) will include specific exemptions for statement of yield on transactions in defaulted bonds, bonds that prepay principal and variable rate securities that are not sold on basis of yield to put. The current rule includes no exemption for these transactions. The Commission believes that a statement of yield on these transactions may mislead investors.

Rule G-15(a)(i)(D)(2) will include a provision regarding municipal CMOs that the dealer must include a statement on the confirmation indicating that the actual yield of municipal CMOs may vary according to the rate at which the underlying receivables or other financial assets are prepaid, and a statement of the fact that information concerning the factors that affect yield (including, at a minimum, estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon the written request of a customer. The Commission believes that this provision should apply to municipal securities as it is similar to the Commission's requirements in Rule 10b-10, the rule for non-municipal securities.

Finally, the Commission believes the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title because the rule will apply to all MSRB members.

⁷ The accreted value for a zero coupon bond reflects the increase in the security's value as it approaches the maturity date. For zero coupon bonds that are callable, the call price is generally at the accreted value.

⁸ The change to rule G-15(a)(i)(C)(2)(e), consistent with current rule G-15(a)(ii)(I), requires that if securities pay interest on other than semi-annual basis, a statement of the basis on which interest is paid shall be included.

Thus, individual brokers and dealers will not be disparately affected by the rule change.

At the MSRB's request, the Commission is delaying effectiveness of the proposed rule change until 120 days after the approval order by the Commission is published in the Federal Register to ensure that firms' confirmation practices are in compliance.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-MSRB-95-4 be, and hereby is, approved and effective November 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35954; File No. SR-NASD-95-21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Freely Tradeable Direct Participation Program Securities

July 11, 1995.

On May 23, 1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),² and Rule 19b-4 thereunder.³ The proposed rule change excludes freely tradeable direct participation program securities from the prohibition on transactions in discretionary accounts without written approval. However, the exclusion is restricted to members that are not affiliated with the freely tradeable direct participation program.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission

¹ The proposal was originally filed with the Commission on May 10, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends Subsections (b)(3)(C)(i) and (ii) to Article III, Section 34 of the Rules of Fair Practice, by replacing the phrase "the NASDAQ System" in Subsections (i) and (ii) and the word "NASDAQ" in Subsection (ii) with the word "Nasdaq." Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

release (Securities Exchange Act Release No. 35788, May 31, 1995) and by publication in the **Federal Register** (60 FR 30133, June 7, 1995). No comment letters were received. The Commission is approving the proposed rule change.

I. Background

Article III, Section 34 of the Rules of Fair Practice regulates participation by members and persons associated with a member in direct participation programs and limited partnership rollup transactions ("DPP rule"). The DPP rule generally prohibits a member or a person associated with a member from participating in a public distribution of a direct participation program or a limited partnership rollup transaction unless the distribution or transaction conforms to certain suitability and disclosure requirements and standards of fairness and reasonableness.

Since the adoption of the DPP rule in 1982,⁴ an increasing number of direct participation programs, such as master limited partnerships, have issued partnership units, depositary receipts for such units, or assignee units of limited partnership units that are freely tradeable in a manner generally analogous to common stock and are quoted on Nasdaq or listed on registered national stock exchanges.

A direct participation program security is considered freely tradeable under Section 34 if it is either (1) a secondary public offering of or a secondary market transaction in a direct participation program security for which quotations are displayed on Nasdaq or which is listed on a registered national securities exchange, or (2) a primary offering of a direct participation program for which an application for inclusion on Nasdaq or listing on a registered national securities exchange has been approved.

To address the increased transparency and liquidity associated with the nature of the secondary markets for freely tradeable direct participation program securities, the NASD amended the DPP rule to exempt freely tradeable direct participation program securities from the suitability requirements of Subsections 34(b)(3) (A) and (B) of the DPP rule.⁵

⁴ The DPP rule was initially approved by the Commission as Appendix F to Article III, Section 34 on September 16, 1982 (Securities Exchange Act Release No. 19054); 47 FR 42226 (September 24, 1982).

⁵ See Securities Exchange Act Release No. 23619 (September 15, 1986); 51 FR 33968 (September 24, 1986). However, freely tradeable direct participation program securities are still subject to the general suitability rules of the NASD. See NASD's Rules of Fair Practice, Article III, Section 2. Section 2(a) states:

Recently, the NASD considered whether Monthly Income Preferred Securities ("MIPS"), a new financial instrument which is a freely tradeable direct participation program security, ought to be subject to the discretionary account restrictions in Article III, Section 34.⁶ In its consideration, the NASD determined that the concerns which attach to the use of discretionary authority for illiquid, unmarketable direct participation program securities are not present with freely tradeable direct participation program securities.

II. The Terms of Substance of the Proposed Rule Change

The proposed rule change reverses the order of current Subsections (b)(3)(C) and (D) to Section 34 and adds a reference to Subparagraph 3(C) in new Subparagraph 3(D) to exclude freely tradeable direct participation program securities from the prohibition on transactions in discretionary accounts without written approval. However, the exclusion for freely tradeable direct participation program securities in newly designated Subparagraph (3)(D) restricts the exclusion to members that are not affiliated with the direct participation program.

III. Discussion

The Commission believes that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which require that the rules of the Association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade. The rule change relieves members of their obligation to comply with the prohibitions against discretionary transactions in freely tradeable direct participation program securities without written approval because the transactions do not present the substantial conflicts of interest and regulatory concerns that the

[I]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

⁶ MIPS are preferred securities issued by a parent company's subsidiary, which is structured as a limited partnership or limited liability company. The subsidiary issues MIPS to investors and invests the proceeds in convertible subordinated debentures of the parent. Interest on the debentures of the parent are paid to the subsidiary, which in turn pays the equivalent rate of interest to MIPS holders in the form of dividends. MIPS are eligible to be listed on a national securities exchange or The Nasdaq Stock Market and have flow-through tax consequences for investors, which means that they are considered direct participation programs and, therefore, subject to Section 34.

⁷ 15 U.S.C. 780-3.

prohibitions were intended to address. Furthermore, freely tradeable direct participation securities that are included on Nasdaq or listed on a registered national securities exchange provide investors with a liquid and available market for trading surplus securities placed in their discretionary accounts without written approval.

The exclusion for freely tradeable direct participation program securities is limited to members that are not affiliated with the direct participation program. Where such an affiliation is present, the Commission agrees with the NASD that substantial conflict of interest and regulatory concerns continue to exist and the exclusion should not be made available.

The NASD's members' use of discretionary authority for transactions in freely tradeable direct participation program securities is consistent with the NASD's 1986 amendments to Section 34 exempting freely tradeable direct participation program securities from the suitability and disclosure requirements of Section 34. The heightened suitability and disclosure requirements, which are necessary where direct participation program securities lack liquidity and marketability, are unnecessary where a ready, liquid market exists.

In addition, discretionary transactions in freely tradeable direct participation program securities would remain subject to the general discretionary account requirements contained in Article III, Section 15 of the Rules of Fair Practice.⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-21 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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⁸ Article III, Section 15(a) of the Rules of Fair Practice provides that "[n]o member shall effect with or for any customer's account in respect to which such member or his agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of the account."