

granting certain authority to the senior person then in charge of the Control Room to suspend the firm quote requirement when there has been a system malfunction affecting the dissemination or updating of quotes.

The Exchange also believes that the entire proposal is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>9</sup> Specifically, the Commission finds that the Exchange's proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

For purposes of the CBOE's proposal to permanently approve the ten contract firm quote pilot program, the Commission reasserts its initial position regarding the benefits of the rule on the CBOE.<sup>10</sup> Specifically, the permanent approval of the ten contract firm quote requirement rule is consistent with Section 6(b)(5) of the Act in that the rule results in improved market quality and better market maker performance than would otherwise occur. The ten contract firm quote requirement should continue to result in better executions of small customer orders by ensuring greater depth of CBOE options markets.

The Commission also believes that the ten contract firm quote requirement encourages market makers to become more competitive in making size markets, thereby facilitating transactions in securities, contributing to a more free and open market, and improving the quality of the CBOE's public customers' options markets.

The Commission also believes that it is appropriate for the Exchange to conform its rules to the current practice not to automatically suspend the ten contract firm quote requirement when a fast market has been declared.<sup>11</sup> Accordingly, the Commission believes that it is appropriate to add Interpretation .07 to Rule 8.51 to grant any two Floor Officials the authority, but not require them, to suspend the ten contract firm quote requirement during a fast market. The Commission agrees with the CBOE that, during a fast market, Exchange officials should have the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether the ten contract firm quote requirement should be suspended. Both amended Rule 8.51(a)(2) and proposed Interpretation .07 to Rule 8.51 adequately address these issues and should help minimize adverse impact on non-broker dealer customers during a fast market when two Floor Officials determine that market conditions and circumstances do not warrant such action.

The Commission also believes it is appropriate to allow the Exchange to allow any two Floor Officials, including members of the Market Performance Committee acting as Floor Officials and members of the Floor Officials Committee, to grant suspensions, exemptions, or exceptions to the ten contract firm quote requirement under Rule 8.51. Specifically, proposed rule change will (i) allow members of the Market Performance Committee to retain authority to grant exemptions from, or to suspend, the ten contract firm quote requirement under Rule 8.51, and grant Floor Officials that same authority; and (ii) clarify that the authority of Market Performance Committee members under Interpretation .09 under Rule 6.20 includes enforcing policies and acting pursuant to rules related to RAES and fast markets.<sup>12</sup> The Commission believes that the Exchange adequately addresses these issues by amending (1) Rule 8.51(a)(3), (2) Interpretation .06 to Rule 8.51, (3) Interpretation .09 to Rule 6.20, and (4) Rule 6.6(b)(iv) as set forth above in Section II.

In regard to RAES orders during a fast market, the Commission believes that it is appropriate to grant any two Floor Officials, pursuant to proposed Rule 6.6(b)(v), the express authority to turn off RAES after a fast market declaration if in the interest of maintaining a fair and orderly market. Floor Officials have the general authority to turn off RAES

during unusual market conditions pursuant to current Rule 6.6(b)(v). Current Rule 6.6(b)(v) allows Floor Officials to "[t]ake such other actions as are deemed necessary in the interest of maintaining a fair and orderly market." The Commission agrees with the Exchange that by expressly granting its Floor Official the discretion to turn off RAES during a fast market, Exchange members and the public will be properly notified that such action may be taken when a fast market has been declared.

The Commission also believes that it is appropriate to allow the senior person then in charge of the Exchange's Control Room the authority to suspend the ten contract firm quote requirement if there is a systems malfunction or other circumstance that affects the Exchange's ability to disseminate or update market quotes. The type of circumstances that might impair the Exchange's ability to disseminate or update market quotes in a timely and accurate manner, include, but are not limited to, outages of the Exchange's autoquote system, communication disruptions between the Exchange and the Processor for the Options Price Reporting Authority, and the unavailability of market data from the underlying market and the CBOE.<sup>13</sup> The Commission notes that the proposed rule change requires the senior person in charge of the Exchange's Control Room to immediately seek approval from two Floor Officials after exercising such authority. The Commission believes that this proposed rule change provides a reasonable mechanism for the CBOE to suspend the market maker's obligations under Rule 8.51 when the Exchange is unable to disseminate the then current and accurate quote.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-CBOE-95-52) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Jonathan G. Katz,

Secretary.

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Securities Exchange Act Release No. 26924 (June 13, 1989), 54 FR 26284 (June 22, 1989).

<sup>11</sup> See CBOE Rule 8.51(a)(2).

<sup>12</sup> See CBOE Letter, *supra* note 6.

<sup>13</sup> See CBOE Letter, *supra* note 6.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

[Release No. 36640; File No. SR-MSRB-94-14]

**Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Relating to the Settlement Dates for "When, As and If Issued" Transactions, the Confirmation of Inter-Dealer Transactions, and Providing New Issue Information to Registered Securities Clearing Agencies**

December 27, 1995.

On August 15, 1995, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSRB-95-14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the Federal Register on October 16, 1995.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

**I. Description of the Proposal**

On February 28, 1995, the Commission approved amendments to MSRB rules G-12(b) and G-15(b) redefining regular-way settlement as three rather than five business days after the trade date ("T+3 settlement").<sup>3</sup> Since that time, the MSRB has been reviewing its rules to determine other appropriate changes to accommodate T+3 settlement within the municipal securities market.

Consequently, the MSRB is amending rules G-12 and G-34 to modify the requirements for setting settlement dates for "when, as and if issued" (collectively "when-issued") transactions and for the confirmation of inter-dealer transactions. The MSRB also is modifying and reorganizing the requirements for providing new issue information to registered securities clearing agencies. Finally, the MSRB is making technical changes to rule language to clarify the different processing requirements for transactions that are eligible for automated comparison through the facilities of a registered clearing agency as opposed to those that are not eligible. The MSRB designed these amendments to advance T+3 settlement in the municipal

securities market, to generally facilitate automated clearance and settlement of municipal securities, and to support the MSRB's Transaction Reporting Program.<sup>4</sup>

MSRB rule G-12(f) requires all inter-dealer transactions eligible for automated comparison to be compared in an automated comparison system operated by a registered clearing agency. Revised MSRB rule G-12(b) requires that the settlement date for when-issued transactions eligible for automated comparison shall not be earlier than two business days after notification of the initial settlement date for the issue is provided by the managing underwriter to the registered clearing agency.<sup>5</sup> This change reflects current capabilities of the automated comparison system to process when-issued transactions upon two days notice of the settlement date from the underwriter.

Prior to the current amendment, MSRB rule G-12(b) required that the settlement date of a when-issued transaction for the rare inter-dealer transactions not eligible for automated comparison could not be earlier than the fifth business day following the date the physical confirmation indicating the final settlement date was sent (six days for syndicate transactions).<sup>6</sup> Under the revised rule, the settlement date for such ineligible when-issued transactions, including syndicate transactions, shall not be earlier than the third business day following the date that the confirmation indicating the final settlement date is sent.

Furthermore, the MSRB amended rule G-12(c) concerning the sending of confirmations for inter-dealer transactions not eligible for automated comparison. For such ineligible when-issued transactions, the MSRB is reducing the time period for sending (i) the initial confirmation from two business days to one business day after trade date and (ii) the final confirmation from five business days to three business days prior to final settlement.

<sup>4</sup> MSRB rule G-14 sets forth the Transaction Reporting Procedures for inter-dealer transactions.

<sup>5</sup> Former MSRB rule G-12(b)(ii)(c) required the underwriter to provide the initial settlement date for a new issue to the registered clearing agency offering automated comparison services as soon as the initial settlement date was known or immediately upon a change. This requirement continues in effect by cross-reference in revised rule G-12(b)(2)(C) to new rule G-34(a)(ii)(D)(2). Generally, the automated comparison system requires two days advance notice of the initial settlement date of an issue from the underwriter to process when-issued transactions for the underwriter and all other dealers.

<sup>6</sup> Nearly all new issue municipal securities are eligible for automated comparison with the exception of those that do not meet the CUSIP numbering eligibility requirements.

For regular-way transactions ineligible for automated comparison, the MSRB is changing the requirement for sending a confirmation from one business day after trade date to trade date.

In addition, the MSRB is amending rule G-34 to require underwriters to submit interest rate and final maturity information about new issues to the registered clearing agency offering comparison services as soon as such information is known and to reorganize the existing requirements of the rule. The MSRB is aware of instances in which incomplete or inaccurate security descriptions for new issue municipal securities are available in the initial days of trading in the issue. The MSRB's Transaction Reporting Program and participants in the municipal securities market rely on accurate and complete security descriptions in the automated comparison system. The new requirement is designed to ensure that the registered securities clearing agencies have the information necessary to provide accurate descriptions and to calculate accurately final money amounts. Because the MSRB's Transaction Reporting Program is linked to the National Securities Clearing Corporation's ("NSCC") automated comparison system,<sup>7</sup> the proposed amendment also will facilitate accurate prices and security descriptions in the NSCC system.

The requirement that an underwriter provide the registered clearing agency with notification of the settlement date as soon as it is known is being moved from rule G-12(b) to rule G-34. The placement of this requirement within rule G-34 is part of the MSRB's plan to include basic new issue requirements for underwriters within one rule.<sup>8</sup> Finally, the MSRB is making technical changes in rule language to clarify the different processing requirements for transactions that are eligible for automated comparison as opposed to

<sup>7</sup> As set forth in detail in MSRB rule G-14, brokers, dealers, or municipal securities dealers must submit or cause the submission of specified transaction information for any transaction eligible to be compared in NSCC's automated system directly to NSCC or to another registered clearing agency linked with NSCC for the purpose of automated comparison.

<sup>8</sup> As amended, Rule G-34 will require underwriters for new issues of municipal securities to carry out certain functions. Generally, underwriters must apply for depository eligibility, attain CUSIP numbers, communicate CUSIP numbers and the initial trade date to syndicate and selling group members, and, for any new issue eligible for automated comparison, to provide the clearing agency responsible for comparing when, as and if issued transactions with final interest rate and maturity information and the settlement date as soon as they are known.

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> Securities Exchange Act Release No. 36352 (October 6, 1995), 60 FR 53652 [File No. SR-MSRB-95-14] (notice of filing of proposed rule change).

<sup>3</sup> Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 [File No. SR-MSRB-94-10] (order approving proposed rule change).

those transactions that are ineligible for automated comparison.

## II. Discussion

Section 15B(b)(2)(C)<sup>9</sup> of the Act authorizes the MSRB to adopt rules to foster cooperative and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. The MSRB also has the authority to adopt rules 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 Commission believes the MSRB's proposed rule change is consistent with the requirements of Section 15B(b)(2)(C) because it will require earlier confirmation of certain inter-dealer when-issued and regular way transactions and require a shorter settlement cycle for certain inter-dealer when-issued transactions. Furthermore, the amendments will conform the MSRB's rules regarding the settlement dates for when-issued transactions eligible for automated comparison at a registered clearing agency with the clearing agency's processing capabilities for these transactions. Finally, the amendments require underwriters to provide registered clearing agencies with interest rate and final maturity information about new issues as soon as such information is known. This should help ensure that clearing agencies have the information necessary to calculate accurately final money amounts and to provide complete and accurate descriptions of new issues in the automated comparison system and should promote accurate pricing and securities descriptions in the MSRB Transaction Reporting System which is linked to the automated comparison system.

Collectively, the amendments should facilitate automated comparison of transactions in municipal securities and foster cooperation and coordination with persons involved in the clearance and settlement of municipal securities by making MSRB rules and clearing agency processing capabilities consistent thus enabling the municipal securities market to maximize the benefits and efficiencies from the automated comparison system and by helping to ensure more timely confirmation of certain municipal transactions thereby increasing the likelihood that such transactions will settle within the shorter settlement cycle established in this proposal.

Finally, the proposal should remove impediments to and perfect the mechanisms of a free and open market in municipal securities by requiring more efficient and accurate reporting of transaction information by underwriters to clearing agencies and thus to the MSRB Transaction Reporting System.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15B 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-MSRB-95-14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz,

Secretary.

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[Release No. 34-36612; File No. SR-NASD-95-30]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Commencement of Third Market Trading in Initial Public Offerings of Exchange-Listed Securities

December 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which have been prepared by the self-regulatory organization. On December 15, 1995, the NASD filed with the Commission Amendment No. 1 to the proposal which clarifies the operation of the proposed amendment, and requests accelerated effectiveness of the proposed rule change.<sup>3</sup> The Commission is publishing this notice to

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

<sup>3</sup> See letter from Joan Conley, Corporate Secretary, NASD, to Mark Barracca, Branch Chief, Commission, dated December 15, 1995.

solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rule Change

The NASD proposes to amend Section 4 of Schedule G to the NASD By-Laws to prohibit NASD members from executing over-the-counter transactions in an exchange-listed security that is the subject of an initial public offering ("IPO security") until the security has opened for trading on the exchange that lists the security.<sup>4</sup> (Additions are in italics; deletions are bracketed.)

### Schedule G

#### Sec. 1. Definitions

(a)-(f). No change.

(g) *The term "over-the-counter transaction" shall mean a transaction in an eligible security effected otherwise than on a national securities exchange.*

(h) *A security is subject to an "initial public offering" if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.*

\* \* \* \* \*

#### Sec. 4. Trading Practices

(a)-(h). No change.

(i) *No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.*

## 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

<sup>4</sup> The Commission notes that the paragraph designation within the proposed rule language, as originally filed, has been adjusted with the NASD staff's consent, to reflect an outstanding proposal currently under review with the Commission. Telephone conversation between Tom Gira, Assistant General Counsel, NASD, and Betsy Prout Lefler, Senior Counsel, Commission, on December 19, 1995.

<sup>9</sup> 15 U.S.C. § 78o-4(b)(2)(C).