

except for these notification provisions, the proposed amendment would make no substantive change to the provisions of the Plan that were added pursuant to the Commission Amendment.

II. Solicitation of Comments

OPRA has stated that the proposed amendment involves solely technical or ministerial matters and is, therefore, effective upon filing, pursuant to Rule 11Aa3-2(c)(3)(iii) under the Act.⁷

At any time within 60 days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that such amendment be filed in accordance with Rule 11Aa3-2(b)(1) under the Act⁸ and reviewed in accordance with rule 11Aa3-2(c)(2) under the Act⁹ if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those 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 at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-01-01 and should be submitted by February 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43858; File No. SR-MSRB-00-06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to Municipal Fund Securities

January 18, 2001.

I. Introduction

On April 5, 2000, the Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to municipal fund securities. On July 17, 2000, the Board submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 2, 2000.⁴ The Commission received one comment letter on the proposed rule change.⁵ On October 12, 2000, the Board submitted Amendment No. 2 to the proposed rule change.⁶ This order approves the proposal, as amended. The Commission also seeks comment from interested persons on Amendment No. 2.

II. Description of the Proposal

The proposed rule change consisted of the following: (1) A proposed definition of municipal fund security; (2) amendments to MSRB Rule A-13

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Board submitted an amended Form 19b-4, which supplemented the original filing ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 43066 (July 21, 2000), 65 FR 47530. On August 11, 2000, corrections to the notice were published in the **Federal Register**. See Securities Exchange Act Release No. 43066A (August 4, 2000), 65 FR 49279.

⁵ See letter from Kevin R. Bertolini, Legal Counsel, Fidelity Investments, to Jonathan G. Katz, Secretary, SEC, dated August 22, 2000.

⁶ See letter from Ernesto A. Lanza, Associate General Counsel, MSRB, to Katherine England, Associate Director [sic], Division of Market Regulation ("Division"), SEC, dated October 11, 2000 ("Amendment No. 2"). In Amendment No. 2, the MSRB responded to the issues raised in the comment letter. The MSRB, in response to the commenter's suggestion, amended proposed MSRB Rule G-15(a)(i)(C)(5) to delete the requirement to disclose whether a municipal fund security is puttable or otherwise redeemable by the customer on the confirmation. The Board also proposed to amend MSRB Rule G-15(a)(viii)(B)(2) to delete the reference to MSRB Rule G-15(a)(i)(C)(5).

regarding underwriting and transaction assessments; (3) amendments to MSRB Rule G-3 regarding the classification of principals and representatives, and testing and continuing education requirements; (4) amendments to MSRB Rule G-8 regarding books and records; (5) amendments to MSRB Rule G-14 regarding reports of sales or purchases; (6) amendments to MSRB Rule G-15 regarding confirmations and clearance and settlement of transactions with customers; (7) amendments to MSRB Rule G-26 regarding customer account transfers; (8) amendments to MSRB Rule G-32 regarding disclosures in connection with new issues; and (9) amendments to MSRB Rule G-34 regarding CUSIP numbers and new issue requirements. In addition, the MSRB submitted a proposed interpretation regarding sales of municipal fund securities in the primary market.

1. Proposed MSRB Rule D-12— Definition of Municipal Fund Security

The Board proposed to define a municipal fund security as a municipal security that would qualify as a security of an investment company under the Investment Company Act of 1940 if it had not been issued by a state or local governmental entity.⁷

As a threshold matter, a municipal fund security must meet the definition of municipal security in section 3(a)(29) of the Act⁸ before a determination can be made as to whether it is a municipal fund security. As proposed by the Board, if a security meets the definition of municipal fund security then dealer transactions would be subject to all MSRB rules. The Board noted that its proposed definition would not be limited to interests in local government pools or higher education trusts that may be found to be municipal securities. The proposed definition would apply to any other municipal security issued under a program that, but for the identity of the issuer as a state or local governmental entity, would constitute an investment company under the Investment Company Act.

⁷ The Board distinguished municipal fund securities from shares in a mutual fund that is registered under the Investment Company Act of 1940 with assets invested in municipal securities, which shares would not be considered municipal fund securities.

⁸ 15 U.S.C. 78c(a)(29).

⁷ 17 CFR 240.11Aa3-2(c)(3)(iii).

⁸ 17 CFR 240.11Aa3-2(b)(1).

⁹ 17 CFR 240.11Aa3-2(c)(2).

¹⁰ 17 CFR 200.30-3(a)(29).

2. MSRB Rule A-13—Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers

The Board proposed to exempt the sale of municipal fund securities from the underwriting assessment imposed under section (b) of MSRB Rule A-13.

3. MSRB Rule G-3—Professional Qualifications

The Board proposed to permit associated persons that are qualified as investment company limited representatives to effect transactions in municipal fund securities, but not in other municipal securities.⁹ However, a dealer must continue to have one or two municipal securities principals, as required under MSRB Rule G-3(b), even if the dealer's only municipal securities transactions are sales of municipal fund securities.

4. MSRB Rule G-8—Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

The Board proposed to amend MSRB Rule G-8 to recognize that municipal fund securities do not have par values, dollar prices, yields, or accrued interest. In addition, the Board proposed to amend MSRB Rule G-8 to recognize that investment company limited representatives may be permitted to effect transactions in municipal fund securities. Under MSRB Rule G-8, dealers would be required to retain copies of all periodic statements delivered to customers in lieu of individual confirmations of municipal fund securities transactions pursuant to MSRB Rule G-15. Further, pursuant to MSRB Rule G-8, a dealer effecting transactions in municipal fund securities would be permitted to meet its books and records obligations by having a transfer agent maintain its books and records for municipal funds securities. A transfer agent that maintains a dealer's books and records would be required to satisfy the requirements of MSRB Rule G-8. Ultimately, however, the dealer remains responsible for the accurate maintenance and preservation of its books and records.

5. MSRB Rule G-14—Reports of Sales or Purchases

In proposed MSRB Rule G-14(b)(i), the Board exempted transactions in municipal fund securities from the

⁹ Therefore, the Board noted that an associated person who sells both municipal fund securities and other types of municipal securities must continue to qualify as either a municipal securities representative or general securities representative.

reporting requirements of the customer transaction reporting system.

6. MSRB Rule G-15—Confirmation, Clearance and Settlement of Transactions With Customers

The Board proposed amendments to MSRB Rule G-15 to reflect that the concepts of par value, yield, dollar value, maturity date and interest do not apply to municipal fund securities. Specifically, the Board proposed to require a dealer to use the purchase or sale price of the security on a confirmation of a municipal fund security transaction, rather than par value, and would permit a dealer to omit yield, dollar price, accrued interest, extended principal, maturity date, and interest rate. Dealers that sell municipal fund securities would be required to include the purchase price of each share or unit as well as the number of shares or units to be delivered. Confirmations of transactions in municipal fund securities would have to include a disclosure that a deferred commission or other charge may be imposed upon redemption, if applicable.¹⁰ Further, the confirmation, as proposed, must include the name used by the issuer to identify the security and, to the extent necessary to differentiate the security from other municipal fund securities of the issuer, any separate program series, portfolio, or fund designation.

The Board proposed to permit dealers to use periodic statements rather than transaction-by-transaction confirmations if customer purchases of municipal fund securities are affected pursuant to certain periodic plans¹¹ or non-periodic programs,¹² in a manner similar to the

¹⁰ According to the Board, disclosure of deferred commissions or other charges includes, for example, any deferred sales load or, in the case of interests in certain higher education trusts, any penalty imposed on a redemption that is not for a qualifying higher education trust.

¹¹ In MSRB Rule G-15, the Board defined the term "periodic municipal fund security plan" as any written authorization or arrangement for a broker, dealer, or municipal securities dealer, acting as agent, to purchase, sell, or redeem for a customer or group of customers one or more specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them).

¹² In MSRB Rule G-15, the Board defined the term "non-periodic municipal fund security program" as any written authorization or arrangement for a broker, dealer, or municipal securities dealer, acting as agent, to purchase, sell, or redeem for a customer or group of customers one or more specific municipal fund securities, setting forth the commissions to be paid by the customer in connection therewith (or the manner of calculating them) and either (1) providing for the purchase, sale, or redemption of such municipal fund securities at the direction of the customer or customers or (2) providing for the purchase, sale,

periodic reporting provision of Rule 10b-10 under the Act.¹³

7. MSRB Rule G-26—Customer Account Transfers

The Board proposed to amend the definition of "nontransferable asset" and the transfer instructions for nontransferable assets in MSRB Rule G-26 to reflect that an issuer of municipal fund securities may limit the dealers that are authorized to carry accounts for customers in such securities.

8. MSRB Rule G-32—Disclosures in Connection With New Issues

The Board proposed to amend MSRB Rule G-32 to permit a dealer to sell, pursuant to a periodic plan¹⁴ or non-periodic program,¹⁵ a municipal fund security to a customer who has previously received the official statement for the security so long as it sends to the customer a copy of any new, supplemented, amended, or stickered official statement promptly upon receipt from the issuer (*i.e.*, actual delivery by settlement will not be required). As proposed, the dealer would be permitted to satisfy its delivery requirement by delivering the amendment alone (including a notice that the complete official statement is available upon request) so long as the customer already has the official statement that is being amended and the dealer ensures that the amendment makes clear what constitutes the complete official statement. In addition, the proposal excepts municipal fund securities for which periodic statements in lieu of transaction confirmations are provided from the requirement that information on the underwriting fees paid to the dealer by the issuer be provided to customers by settlement so long as such information regarding any changes in the fees paid by the issuer to the dealer is sent to customers simultaneously with or prior to the sending of the next periodic statement.

9. MSRB Rule G-34—CUSIP Numbers and New Issue Requirements

The Board proposed to exempt municipal fund securities from the requirements of MSRB Rule G-34,

or redemption of such municipal securities at the direction of the customer or customers as well as authorizing purchase, sale, or redemption of such municipal fund securities in specific amounts (calculated in security units or dollars) at specific time intervals.

¹³ 17 CFR 240.10b-10.

¹⁴ See note 11 *supra*.

¹⁵ See note 12 *supra*.

10. Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market

The Board proposed to provide interpretative guidance with respect to the application of MSRB Rules G-23, G-32, G-36, G-37, and G-38 to dealer transactions in municipal fund securities.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.¹⁶ In its letter, the commenter stated that interests in local government investment pools ("LGIPs") and qualified state tuition programs ("QSTPs") are not municipal securities for purposes of the Act. Notwithstanding this position, the commenter provided suggestions to the proposed revisions to MSRB Rule G-15 to assist in its compliance efforts should the proposed rule change be approved. The Board responded to the issues raised by the commenter in Amendment No. 2.¹⁷

First, the commenter argued that the requirement that the time of execution or a statement that the time of execution will be furnished upon request be included on a confirmation is unnecessary for LGIPs and QSTPs. According to the commenter, these products are priced once a day and the pricing policies are disclosed in the offering documents. Thus, according to the commenter, requiring additional disclosure on the confirmation yields no additional benefits and does not serve to further protect the interests of investors.

The Board disagreed; it believes that dealers executing transactions in municipal securities should be obligated to disclose the time of execution or state that the time of execution will be furnished upon written request. The Board argued that this information may be relevant, depending on the facts and circumstances, in determining whether a transaction was executed as the customer expected or as required under the Board's rules. The Board noted that disclosure of transactions effected under a periodic plan or a non-periodic program may be provided by a dealer in a separate document, such as the offering document. The Board further noted that this disclosure is required to appear on individual transaction confirmations by Rule 10b-10(a)(1).¹⁸ In addition, the Board noted that pursuant to Rule 10b-10(b)(2),¹⁹ any periodic statement used in lieu of individual

transaction confirmations must include, among other things, a statement to the effect that any information required by Rule 10b-10(a)²⁰ that is not set forth in the periodic statement will be furnished upon written request. Therefore, the Board believes that its disclosure requirement in MSRB Rule G-15 is consistent with Commission rules applicable to securities that are similar in many respects to municipal fund securities.

Second, the commenter argued that proposed MSRB Rule G-15 is consistent with Commission rules applicable to securities that are similar in many respects to municipal fund securities.

Second, the commenter argued that proposed MSRB Rule G-15(a)(i)(C)(5)(f), which requires redeemability to be indicated on a confirmation, yields little benefit to purchasers of either LGIPs or QSTPs if such disclosure is included in the offering documents. Further, the commenter argued that requiring disclosure of redeemability on the transaction confirmation may serve to further confuse customers.

After reviewing the reasons for including the puttable of municipal securities on transaction confirmations, the Board determined that deleting the requirement of disclosing puttable on confirmations of municipal fund securities transactions would not affect its customer protection goals. According to the Board, the redeemability of municipal fund securities by their owners is a standard feature of such securities²¹ and a dealer selling municipal fund securities would be required to disclose, at or prior to the time of the trade, all material facts relating to the securities, including material facts about redeemability. However, the puttable of a municipal fund security on a transaction confirmation would not serve any function in identifying or distinguishing the particular municipal fund security that is the subject of the transaction being confirmed. Therefore, the Board amended proposed MSRB Rule G-15(a)(i)(C)(5) to delete the requirement that puttable or redeemability be disclosed on the transaction confirmation. The Board also made conforming amendments to MSRB Rule G-15(a)(viii)(B)(2).

²⁰ 17 CFR 240.10b-10(a).

²¹ In contrast, the puttable of debt instruments is considered a non-standard feature whose absence or presence may have a significant effect on, among other things, the nature and value of the debt instrument. Thus, according to the Board, puttable is often a crucial term for distinguishing one security from another and for ensuring that the security that is delivered in fact matches with the security that was bargained for.

Finally, the commenter argued that proposed MSRB Rule G-15 could be read to prohibit certain LGIPs from utilizing the periodic transaction reporting provisions because under the proposal only those municipal fund securities that are sold either through a periodic plan²² or non-periodic municipal fund security program²³ may utilize the periodic transaction reporting provisions. This, according to the commenter, would prohibit certain no-load LGIPs that are managed like money market funds and seek to maintain a stable net asset value from utilizing the periodic transaction reporting provisions.

According to the commenter, the Board's proposed amendments to MSRB Rule G-15 were patterned, in part, after Rule 10b-10 under the Act.²⁴ The commenter requested that the Board permit the use of periodic statements rather than individual transaction confirmations for stable, no-load LGIPs, regardless of the method of distribution. In the alternative, the commenter suggested that the MSRB amend MSRB Rule G-15 to more closely track the provision of rule 10b-10 under the Act²⁵ to permit the use of periodic statements in lieu of individual transaction confirmations for no-load LGIPs that are managed like money market funds and seek to maintain a stable net asset value regardless of whether the LGIPs are sold pursuant to periodic or non-periodic programs.

In addition, the commenter suggested that the MSRB amend the definition of "non-periodic municipal fund security program" to specifically state that a dealer may be acting as agent for either the issuer or the customer because, according to the commenter, LGIPs are sometimes bought and sold absent any explicit designation of agency by the customer to the entity effecting transactions in the pool. The commenter believes that this modification would resolve any lingering uncertainty regarding the ability of LGIPs to utilize periodic transaction reports.

In response, the Board stated that it believed the proposed definition of "non-periodic municipal fund security program" permits an authorization or arrangement relating to municipal fund securities to qualify as a non-periodic program regardless of whether the dealer is acting as agent for the issuer or for the customer.²⁶ Therefore, the Board

²² See note 11 *supra*.

²³ See note 12 *supra*.

²⁴ 17 CFR 240.10b-10.

²⁵ 17 CFR 240.10b-10.

²⁶ The Board noted that if the dealer is acting as principal, individual transaction confirmations would be required.

¹⁶ See note 5 *supra*.

¹⁷ See note 6 *supra*.

¹⁸ 17 CFR 240.10b-10(a)(1).

¹⁹ 17 CFR 240.10b-10(b)(2).

stated that it believed that no modification of the proposed definition was necessary.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board.²⁷ In particular, the Commission believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,²⁸ which requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 Commission notes that the Board's proposal amends its current rules to accommodate the unique characteristics of municipal fund securities. According to the Board, it did not seek to extend the application of its rules to products that were not already subject to its rules. Specifically, the Board's proposal only applies to those interests that satisfy the definition of municipal fund securities, which includes the requirement that such interests be municipal securities. The Board's proposal recognizes that municipal fund securities have unique terms and characteristics that, in some circumstances, should be accorded different treatment under the Board's rules.

1. Definition of Municipal Fund Security

The Board proposed to define a municipal fund security as a municipal security that but for the identity of the issuer as a state or local governmental entity would qualify as a security of an investment company under the Investment Company Act of 1940. The threshold issue is whether an interest in a trust fund held by a state or local governmental entity is in fact a municipal security. In an interpretative letter, the staff of the Division stated that interests in local government pools and higher education trusts may be depending on the facts and circumstances, municipal securities for

the purposes of the Act.²⁹ If an interest in a trust fund held by a state or local governmental entity is not a municipal security, as defined by the Act, it would not be considered a municipal fund security subject to the rules of the Board.

The Commission believes that the proposed definition of municipal fund security is consistent with section 15B of the Act.³⁰ The definition is appropriately limited to those interests that are municipal securities over which the Board has jurisdiction. Specifically, section 15B(b)(2)³¹ of the Act states that the board shall propose and adopt rules with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers. While the determination of whether an instrument is in fact a municipal security depends on the facts and circumstances of each individual instrument, if the instrument is a municipal security, it is subject to the rules of the Board. Further, the Commission notes that consistent with the requirements of section 15B(b)(2), the proposed rule change only governs those transactions in municipal fund securities that are effected by brokers, dealers, or municipal securities dealers.

2. MSRB Rule G-8—Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

The Board proposed several changes to its books and records requirements to accommodate municipal fund securities. First, to accommodate the terms of municipal fund securities that differ from more traditional municipal securities, the Board proposed to amend Rule G-8 to require that books and records to be kept for municipal fund securities include those terms that are required to be reflected on a customer's confirmation pursuant to MSRB Rule G-12 and MSRB Rule G-13. Specifically, municipal fund securities do not have par values, dollar prices, yields, or accrued interest. Thus, the amendment reflects the absence of these terms for municipal fund securities. The Commission believes that it is appropriate for the MSRB to tailor its rules to reflect the peculiar nature of these instruments.

Second, the Board proposed to require that municipal securities dealers retain copies of all periodic written statements disclosing purchases, sales, or redemptions of municipal funds

securities, as currently required for confirmation of municipal securities. The Commission believes that this distinction should remove any confusion as to the required books and records to be retained regarding municipal fund securities.

Third, the Board proposed to permit dealers effecting transactions in municipal fund securities to meet their books and records requirements by having a transfer agent maintain their books and records. Pursuant to the proposed rule, the transfer agent must meet all of the requirements of MSRB Rule G-8; the dealer will remain ultimately responsible for the accurate maintenance and preservation of its books and records. The Commission believes that transfer agents should be able to adequately keep and maintain a dealer's books and records consistent with the rules of the MSRB as well as the requirements under the Act. However, dealers should actively monitor and ensure that their delegated transfer agents diligently and completely maintains their books and records because any failure of the transfer agent to adequately maintain and keep the dealer's books and records will also be considered a failure of the dealer.

3. MSRB Rule G-14—Reports of Sales or Purchases

The Board proposed to exclude transactions in municipal funds securities from its customer transaction reporting system. The Board presented a number of arguments supporting its decision not to require transaction reporting for municipal fund securities. The major reason was the lack of a secondary market for these products. According to the Board, because municipal fund securities do not trade in the secondary market, transaction reporting would be limited to one-time sales transactions to customers upon initial issuance and one-time purchases (or redemptions) upon cashing out. Further, the Board argued that because municipal fund securities are sold by dealers on an agency basis generally without payment of commissions, dealers would have little opportunity to alter the pricing of municipal fund securities from that set by the issuer. Finally, the Board noted that certain data that must be reported (e.g. dollar price, yield, etc.) would not apply to municipal fund securities.

The Commission believes that at this time the Board's proposed exemptions are consistent with the requirements of the Act. Based on the observations made by the Board, the Commission believes that requiring dealers to report

²⁷ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁸ 15 U.S.C. 78o-4(b)(2)(C).

²⁹ See letter from Catherine McGuire, Chief Counsel, Division, SEC to Diane G. Klinke, General Counsel, MSRB, dated February 26, 1999 ("Division Letter").

³⁰ 15 U.S.C. 78o-4.

³¹ 15 U.S.C. 78o-4(b)(2).

transactions of municipal fund securities would not provide benefits to investors. Specifically, a transaction report for municipal securities does not appear to be necessary to the price discovery process because of the lack of a secondary market and because of dealers' inability to change the prices set by issuers. However, the Commission believes that if the market for municipal fund securities changes in a manner such that investors could benefit from enhanced disclosure and transparency, the Board should consider requiring transaction reports.

4. Proposed MSRB Rule G-15—Confirmation, Clearance and Settlement of Transactions With Customers

The Board proposed to amend the terms that must be set forth in a customer confirmation for a municipal fund security transaction. In addition, the Board proposed to permit periodic statements rather than transaction-by-transaction confirmation, if the customer purchases municipal fund securities pursuant to certain defined periodic plans or non-periodic programs. The Commission believes that these proposed changes should provide investors with pertinent information about their municipal fund securities transactions in a clear and appropriate manner. The Commission believes that removing irrelevant information should create a more useful and accurate confirmation statement for municipal fund securities investors.

In regard to periodic statements, the Commission believes that the changes are consistent with the requirements of the Act. Investors will continue to be provided with confirmations about their municipal fund securities transactions either on a monthly basis, if the investor participates in a non-periodic municipal fund security program, or quarterly basis, if the investor participates in a periodic municipal fund security plan.

5. MSRB Rule G-32—Disclosures in Connection With New Issues

The Commission believes that the Board's proposal regarding delivery of official statements to customers who participate in either periodic municipal fund security plans or non-periodic municipal fund security programs is consistent with the Act. Dealers will continue to be required to forward official statements to customers that participate in periodic plans and non-periodic programs and are required to ensure that their customers have the most recent new, supplemented, amended or stickered official statement in final form. Thus, investors will continue to receive pertinent, material

information about the securities. The amendments should prevent duplicate information from being sent to investors each time a transaction is effected. The Commission believes that requiring official statements to be continuously sent would not serve any regulatory purpose. Dealers must ensure, however, that their customers have current, up-to-date official statements when transactions are effected.

The Commission also believes that the Board's proposal to exempt municipal funds securities for which periodic statements are used from the requirement that information on underwriting fees paid to the dealer by the issuer be disclosed to customers by settlement is consistent with the Act. These dealers will be required to provide information regarding any changes to fees paid by the issuer to the dealer simultaneously with or prior to the sending of the next periodic statement. Therefore, investors will continue to be provided this information in a timely manner.

6. Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market

The Board's proposed interpretation describes the Board's view on sales of municipal fund securities in the primary market and the applicability of Rule 15c2-12,³² regarding Municipal Securities Disclosure, and MSRB Rules G-23 regarding Activities of Financial Advisors, G-32 regarding Disclosures in Connection with New Issues, G-36 regarding Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the Board or its Designee, G-37 regarding Political Contributions and Prohibitions on Municipal Securities Business, and G-38 regarding Consultants.

Specifically, the Board clarified dealers' obligations regarding municipal securities disclosure. In the Division Letter, Division staff stated that if a dealer is acting as an underwriter³³ in connection with a primary offering³⁴ of

³² 17 CFR 240.15c2-12.

³³ An underwriter is defined as any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. 17 CFR 240.15c2-12 (f)(8).

³⁴ A primary offering is defined as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. 17 CFR 240.15c2-12(f)(7). In the Division Letter, the staff stated that based on its analysis of programs brought to its attention interests in local government pools or higher education trusts

interests in local government pools or higher education trusts, the dealer may be subject to the requirements of Rule 15c2-12.³⁵

Accordingly, the Board stated that if municipal fund securities are sold in a primary offering, dealers acting as underwriters generally would be subject to the requirements of MSRB Rule G-36 regarding delivery of official statements and advance refunding documents and Forms G-36(OS) and G-36(ARD). Pursuant to this rule, the Board expects that dealers would receive a final official statement from the issuer or its agent. In addition, the Board noted that municipal fund securities sold in a primary offering would constitute new issue municipal securities and, thus, would be subject to MSRB Rule G-32 regarding disclosures in connection with new securities, so long as the securities are in the underwriting period.

Finally, the Board alerted members to the implications that arise under the Board rules as a result of municipal fund securities being regarded as sold in a primary offering. Specifically, the Board noted that dealers would be subject to the political contribution limitations and prohibitions under MSRB Rule G-37. In addition, MSRB Rule G-38 would govern a dealer's use of consultants. Finally, a dealer's financial advisory or consultant services to an issuer would be subject to MSRB Rule G-23.

The Commission believes that the Board's interpretation should assist brokers, dealers and municipal securities dealers with complying with their obligations under the MSRB's rules regarding transactions in municipal fund securities. In the interpretation, the Board provided guidance on the current rules' application to municipal funds securities. The Commission believes that the interpretation should clarify the rules that govern a dealer's transactions in municipal fund securities.

7. Other Proposed Rules

With respect to the changes proposed by the Board to Rules A-13, Assessments, G-13, Professional Qualifications, G-8, Books and Records to be Made by a Broker, Dealer and Municipal Securities Dealer, G-26 Customer Account Transfers, and G-34, CUSIP and New Issue Requirements, the Commission believes the Board has appropriately tailored its rules to reflect the unique nature of these securities.

generally are offered only by direct purchase from the issuer. Thus, the staff noted that it would view those interests as having been sold in a primary offering.

³⁵ 17 CFR 240.15c2-12.

8. Amendment No. 2

Finally, the Commission finds good cause to accelerate approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 2, the Board amended MSRB Rule G-15(a)(i)(C)(5) to delete the requirement that puttablity or redeemability be disclosed on a transaction confirmation. In this regard, the Board also made conforming changes to MSRB Rule G-15(a)(viii)(B)(2). According to the Board, redeemability is a standard feature of municipal fund securities and, thus, the term does not serve to identify or distinguish a particular municipal fund security. Further, as a standard feature, redeemability would need to be disclosed to customers at the time of trade pursuant to MSRB Rule G-17. The Commission believes that the amendment further tailors the MSRB's rules to accommodate the unique characteristics of municipal fund securities and notes that investors will be provided with disclosure of this term. According to the information provided by the Board, redeemability is not a necessary term that needs to be set forth on a confirmation. Therefore, the Commission believes that good cause exists, consistent with section 15B(b)(2)(C)³⁶ and section 19(b)³⁷ of the Act, to accelerate approval of Amendment No. 2 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. 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-00-06 and should be submitted by February 20, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR-MSRB-00-06), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43873; File No. SR-NASD-99-65]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System

January 23, 2001.

I. Introduction

On October 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to establish a corporate bond trade reporting and transaction dissemination facility and to eliminate Nasdaq's Fixed Income Pricing System ("FIPS"). Notice of the proposed rule change was published for comment in the **Federal Register** on December 10, 1999.³ The Commission received 39 comment letters regarding the proposal.⁴

On November 17 and November 22, 2000, respectively, the NASD filed Amendment Nos. 2 and 3 to the

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 42201 (December 3, 1999), 64 FR 69305.

⁴ A list of the commenters on the proposal as originally noticed appears in Appendix A.

proposed rule change.⁵ Notice of these amendments was published in the **Federal Register** on November 29, 2000.⁶ The Commission received 13 additional comments on the amended proposal since that time.⁷ On January 5, 2001, the NASD filed Amendment No. 4 to the proposed rule change.⁸ This order approves the proposed rule change, as amended by Amendments 2-4, accelerates approval of Amendment No. 4, and solicits comments from interested persons on that Amendment.

II. Background

In 1998, Commission staff conducted a review of the U.S. debt market, with a particular focus on price transparency. The review concluded that the corporate bond market did not measure up to the standard of other securities markets—including the government and municipal bond markets—in making price information readily available to investors. In light of these findings, SEC Chairman Arthur Levitt called upon the NASD to take the following actions:

First, adopt rules requiring dealers to report all transactions in U.S. corporate bonds and preferred stocks to the NASD and to develop systems to receive and redistribute transaction prices on an immediate basis;

Second, create a database of transactions in corporate bonds and preferred stocks to enable regulators to take a proactive role in supervising the corporate debt market; and

Third, create a surveillance program, in conjunction with the development of a database, to better detect fraud and foster investor confidence in the fairness of the corporate debt market.⁹

In response to this request, the NASD formed the Bond Market Transparency Committee, comprised largely of market participants, to work toward an industry-guided solution to increase price transparency and oversight for the corporate debt market.

In September 1998 and March 1999, Chairman Levitt testified for the Commission before Congress on bond

⁵ Amendment No. 2 reflected certain changes proposed by the commenters in response to the proposed rule change, as originally noticed, or changes suggested by the NASD staff after additional review. Amendment No. 3 sets forth the statutory basis of the proposed rule change. Amendment No. 1, which had been submitted to reflect the Association's receipt of written comments from the Regional Municipal Operations Association ("RMOA"), was withdrawn, and the RMOA's comments and the NASD's response to them were incorporated in Amendment No. 2.

⁶ See Securities Exchange Act Release No. 43616 (November 24, 2000), 65 FR 71174.

⁷ A list of the commenters on Amendment Nos. 2 and 3 appears in Appendix B.

⁸ Amendment No. 4 is described in Section IV.C., *infra*.

⁹ Speech by Chairman Levitt, September 9, 1998, at Media Studies Center, New York, NY.

³⁶ 15 U.S.C. 78o-4(b)(2)(C).

³⁷ 15 U.S.C. 78s(b).