

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to ISE-2002-12 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45861, File No. SR-MSRB-2002-04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change by the Relating to Rule G-14, on Reports of Sales or Purchases

May 1, 2002.

On March 27, 2002 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-2002-04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change relates to MSRB Rule G-14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change does not change the wording of Rule G-14.

The Commission published the proposed rule change in the **Federal Register** on April 4, 2002. The Commission received five comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report (the "Report"), which has been provided to subscribers each day since January 2000. The report is made available each morning by 7:00

am and includes details of transactions in municipal securities which were "frequently traded" the previous business day. Since the beginning of the Transaction Reporting Program in 1995, "frequently traded" securities have been defined as those that were traded four or more times on a given business day.

Since 1995, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a T+1 report that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began publishing individual transaction data on frequently traded securities in addition to summarizing their high, low and average prices. The Board has also introduced "comprehensive" transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than two weeks after trade date.³

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that a municipal security is "frequently traded" for purposes of the T+1 transparency report. The proposed rule change would lower the threshold from four to three trades per day. By lowering the threshold, the proposal would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. The present report, with a threshold of four or more trades per day, includes an average of 11,600 trades in 1,100 different issues, with a total par value of about 3.9 billion dollars. Under the proposed threshold, the report is expected to include an average of 14,400 trades in 2,600 issues, with a total par value of about 5.2 billion dollars. This represents a 24 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 33 percent increase in par value reported.⁴

The enhanced Daily Transaction Report with the three-trade threshold will replace the current report and will be available each day to subscribers via

the Internet.⁵ Subscribers to the current Service receive the report free of charge, and their subscriptions will continue with implementation of the proposed Service. New subscriptions will be available free to parties who sign a subscription agreement. In addition, recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

II. Summary of Comments

The Commission received seven comment letters, from two persons, on the proposal.⁶ One of the seven comment letters expressed support for the forgoing proposed rule change. The other six comment letters opposed the proposal.

The comment letter received from TBMA, commends the MSRB's proposed initiative as a mechanism to increase transparency in the municipal securities market.⁷ The letter expresses that decreasing the threshold from four to three trades will provide more reliable indicators of market price while avoiding the dissemination of misleading prices from isolated transactions. However, the letter cautioned that reporting isolated trades, bonds that trade only once or twice on a given day, may require greater MSRB evaluation.

The six comment letters received from Municipalbonds.com criticized the MSRB's proposed rule change as ineffective. In general, the letters from Municipalbonds.com expressed that more attention should be given to the price reporting system by releasing all information, including identities, which correlates with the trade.⁸ The first comment letter received from Municipalbonds.com stated that more transaction information is "useless" if the daily transaction reports "are not being ruled on, watched or utilized by appropriate oversight or enforcement

⁵ The enhanced report will be available to subscribers as soon as practical after SEC approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

⁶ See letter from John M. Ramsey, Vice President and Senior Regulatory Counsel, The Bond Market Association ("TBMA"), to Jonathan G. Katz, Secretary, Commission, dated April 24, 2002; three electronic letters from Kevin Olson, Municipalbonds.com, to SEC Commissioners, dated April 19, 2002; electronic letter from Kevin Olson, Municipalbonds.com, to Commissioners, dated April 11, 2002; and two electronic letters from Kevin Olson, Municipalbonds.com, dated April 10, 2002.

⁷ See letter from TBMA, note 6, *supra*.

⁸ See letters from Municipalbonds.com, note 6, *supra*.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ The first comprehensive report was introduced in October 2000 and listed all trades after a one month delay. The latest comprehensive report began operation in November 2001 and has a two-week delay. See Release No. 34-44894, 66 FR 51485 (October 9, 2001).

⁵ These data are based upon market activity from April 1, 2001 through July 31, 2001.

authorities'.⁹ The same comment letter offered two alternative considerations "to facilitate fair pricing" such as, initiating "a system of identified * * * market makers for any, all or specific municipal bonds' or requiring municipal securities traders to "inform or quote two-sided markets instead of just their bid or offer side."¹⁰

Subsequent letters sent from Municipalbonds.com continued to address reporting inefficiencies. In addition to the two alternatives discussed above, Municipalbonds.com challenged the MSRB to respond to the problem of reporting errors, which Municipalbonds.com has identified.¹¹

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Exchange Act and the rules and regulations thereunder, which govern the MSRB.¹² The language of Section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.¹³

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an amendment to Rule G-14, on professional qualifications, which relates to municipal fund securities limited principals, meets the statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act, set forth above.

⁹ See letter from Municipalbonds.com dated April 10, 2002, note 6, *supra*.

¹⁰ *Id.*

¹¹ See letters from Municipalbonds.com, dated April 19, 2002, note 6, *supra*.

¹² Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o-4(b)(2)(C).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹⁴ that the proposed rule change (File No. SR-MSRB-2002-04) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45862; File No. SR-Phlx-2002-22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Program to Disengage Its Automatic Execution System ("AUTO-X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO-X Minimum Guarantee for that Option

May 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 8, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot, expiring on November 30, 2002.

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

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO-X, the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),³ that would

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic order

disengage AUTO-X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO-X minimum guarantee for that option. The pilot program was originally approved on a six-month basis for a limited number of eligible options,⁴ and subsequently extended for an additional six-month period.⁵ Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.⁶ As of December 1, 2001, the pilot was again extended for an additional six-month period, which is scheduled to expire on May 31, 2002.⁷

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Phlx proposes to extend the pilot program for an additional six-month period. On December 1, 2000, the Initial Pilot Program became effective.⁸ The pilot program was then extended several times and is currently scheduled to end on May 31, 2002.⁹ The pilot program includes the following features:

the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange's trading floor.

⁴ See Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR-Phlx-00-96) ("Initial Pilot Program").

⁵ See Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR-Phlx-2001-56).

⁶ See Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR-Phlx-2001-79).

⁷ See Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR-Phlx-2001-100).

⁸ See *supra* note 4.

⁹ See *supra* note 7.