

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2002-20 and should be submitted by November 8, 2002.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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, with the requirements of Section 6(b)(5).<sup>6</sup> The Commission did not receive comments on the proposed rule change when the pilot was first proposed.<sup>7</sup> Pursuant to Section 19(b)(2) of the Act,<sup>8</sup> the Commission further finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed rule change would eliminate the provisions of the Rule that permit members to execute 40% of certain complex orders without prior exposure to the market.

The Commission believes that limiting such facilitation or crossing rights helps to adequately protect competitive pricing for all orders. Furthermore, this change makes the rule consistent with the rules of CBOE, Amex and Phlx. The Commission also believes that it is appropriate to permanently approve this heretofore-pilot program on an accelerated basis in order to ensure continuous operation of the ISE's framework for trading complex orders.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-ISE-2002-20) is hereby approved on an accelerated basis.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46638; File No. SR-MSRB-2002-13]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Municipal Fund Securities Limited Principal Qualification Examination (Series 51) and Rule G-3 on Professional Qualifications

October 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2002 the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-13). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

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

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

The MSRB has filed with the SEC a proposed rule change consisting of the test specifications and the study outline for the MSRB's new Municipal Fund Securities Limited Principal Qualification Examination (Test Series 51), as well as an amendment to Rule G-3, on professional qualifications (hereafter referred to as "the proposed rule change"). The amendment to Rule G-3 will extend to March 31, 2003 the period during which certain categories of principals may continue to act as municipal fund securities limited principals without taking and passing the new Series 51 examination. The proposed rule change will become operative on November 1, 2002.

A description of the new Series 51 examination is included in the study outline. Confidential information on the examination is included in the test specifications and has been filed with the Secretary of the SEC pursuant to Rule 24b-2 under the Exchange Act for confidential treatment. Below is the text of the amendment to Rule G-3. New language is italicized; deletions are in brackets.

Rule G-3. Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

(a) No change.

(b) Municipal Securities Principal; Municipal Fund Securities Limited Principal.

(i)-(iii) No change.

(iv) Municipal Fund Securities Limited Principal.

(A)-(D) No change.

(E) Temporary Provisions for Municipal Fund Securities Limited Principal. Notwithstanding any other provision of this rule, until *March 31, 2003*, [December 31, 2002,] the following provisions shall apply to any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities:

(1)-(3) No change.

(4) On and after *April 1, 2003*, [January 1, 2003,] all municipal fund securities limited principals (including any municipal fund securities limited principals designated as provided in clause (b)(iv)(E)(1)) must be qualified as provided in subparagraph (b)(iv)(B).

(c)-(h) No change.

\* \* \* \* \*

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See fn. 4, *supra*.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

## 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 MSRB 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 texts of these statements may be examined at the places specified in Item IV below. The MSRB 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

(a) Under section (b)(iv) of Rule G-3, on professional qualifications, an associated person of a broker, dealer or municipal securities dealer ("dealer") may undertake supervisory activities with respect to the dealer's municipal fund securities activities by qualifying as a municipal fund securities limited principal. Current rule G-3(b)(iv)(E)(4) provides that, on and after January 1, 2003, all municipal fund securities limited principals must be qualified by taking and passing the new Series 51 examination.<sup>3</sup>

The Series 51 examination will qualify an associated person of a dealer to manage, direct or supervise certain specified activities, but solely as such activities relate to transactions in municipal fund securities.<sup>4</sup> The examination will be a 90-minute, 60

<sup>3</sup> Prior to this date, a general securities principal (Series 24) or investment company/variable contracts limited principal (Series 26) may act as a municipal fund securities limited principal without further qualification.

<sup>4</sup> These activities consist of (A) underwriting, trading or sales of municipal fund securities; (B) financial advisory or consultant services for issuers in connection with the issuance of municipal fund securities; (C) processing, clearance, and (in the case of non-bank dealers) safekeeping of municipal fund securities; (D) research or investment advice with respect to municipal fund securities (but only to the extent related to the activities described in (A) or (B)); (E) any other activities which involve communication, directly or indirectly, with public investors in municipal fund securities (but only to the extent related to the activities described in (A) or (B)); (F) maintenance of records with respect to the activities described in (A) through (E); and (G) training of municipal securities principals, municipal fund securities limited principals or municipal securities representatives with respect to municipal fund securities. Municipal securities principals (Series 53) will continue to be qualified to manage, direct or supervise such activities, as they relate to municipal fund securities or to any other type of municipal securities. Municipal securities sales principal (Series 9/10) will continue to be qualified to supervise sales to and purchases from customers of municipal securities, including municipal fund securities.

multiple choice question examination with 70% as the passing score. It will measure a candidate's knowledge of municipal fund securities and the securities industry rules and regulations pertinent to such products. The examination will require that the individual taking it have previously or concurrently taken and passed the general securities principal qualification examination (Series 24) or investment company and annuity principal qualification examination (Series 26).

A subcommittee of the MSRB's Professional Qualifications Advisory Committee consisting of industry representatives, working with MSRB staff in consultation with NASD staff, developed the Series 51 study outline and test specifications. The examination will be divided into seven topical sections. The topical sections and the percent of questions designated for each such section are as follows: Regulatory Structure (5%); Product Knowledge (20%); General Supervision (20%); Fair Practice and Conflicts of Interest (15%); Sales Supervision (20%); Underwriting and Disclosure Obligations (10%); and Operations (10%). The specifications for the Series 51 examination specify how the questions asked on each examination are to be allocated among the various subtopics within these topical sections.

Rule G-3 currently allows general securities principals (Series 24) and investment company limited principals (Series 26) to supervise municipal fund securities activities during a transition period that ends on December 31, 2002. On and after January 1, 2003, all municipal fund securities limited principals must be qualified by taking and passing the new Series 51 examination. However, administration of this examination will not begin until on or about January 1, 2003. Thus, the MSRB is extending the period during which Series 24 and 26 principals may continue to supervise municipal fund securities activities without further qualification. The amendment to Rule G-3 will accomplish this by extending the transition period to March 31, 2003. This extension will provide a three-month period during which candidates can take and pass the examination. Under the amendment, all municipal fund securities limited principals will be required to have taken and passed the Series 51 examination by April 1, 2003.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Exchange Act, which provides that it is the MSRB's responsibility to propose and adopt rules which:

provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless \* \* \* such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Exchange Act also provides that the MSRB may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the MSRB.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the SEC for its review at least five business days prior to the filing date; and (iv) does not become operative until November 1, 2002, which is more than thirty (30) days after the date of its filing, the MSRB has submitted this proposed rule change to become effective pursuant to section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(6) thereunder. In particular, the MSRB believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Commission has determined that acceleration of the proposed filings is consistent with the protection of investors and the public

interest.<sup>5</sup> At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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 submissions, 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 offices. All submissions should refer to File No. SR-MSRB-2002-13 and should be submitted by November 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46639; File No. SR-MSRB-2002-11]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Application of Rule G-19, on Suitability of Recommendations, to Online Communications

October 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 25, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") an interpretive notice regarding the application of Rule G-19, on suitability of recommendations, to online communications (the "Online Suitability Notice") as described in Items I, II, and III below, which Items have been prepared by the Board. The Online Suitability Notice is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder, in that the Online Suitability Notice is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. For the reasons discussed below, the Commission is granting accelerated approval of the Online Suitability Notice.

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

The MSRB is issuing this Online Suitability Notice to remind brokers, dealers, and municipal securities dealers ("dealers") that they have suitability obligations when they make recommendations to customers online. The text of the Online Suitability Notice is provided below.

#### *Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications*

##### *Background*

In the municipal securities markets, dealers<sup>3</sup> typically communicate with

investors one-on-one, in person, or by telephone. These dealer/customer communications are made to provide the investor with information concerning the municipal securities the dealer wants to sell and to allow the dealer to find out about the customer's investment objectives. Over the last few years there has been a dramatic increase in the use of the Internet for communication between dealers and their customers. Dealers are looking to the Internet as a mechanism for offering customers new and improved services and for enhancing the efficiency of delivering traditional services to customers. For example, dealers have developed online search tools that computerize the process by which customers can obtain and compare information on the availability of municipal securities of a specific type that are offered for sale by a particular dealer.<sup>4</sup> Technological advancements have provided many benefits to investors and the brokerage industry. These technological innovations, however, also have presented new regulatory challenges, including those arising from the application of the suitability rule to online activities. In consideration of this, the MSRB is issuing this notice to provide dealers with guidance concerning their obligations under MSRB Rule G-19, relating to suitability of recommendations,<sup>5</sup> in the electronic environment.<sup>6</sup>

Rule G-19 prohibits a dealer from recommending transactions in municipal securities to a customer

Act. The use of the term in this notice does not imply that the entity is necessarily taking a principal position in a municipal security.

<sup>4</sup> The Bond Market Association's ("TBMA") 2001 Review of Electronic Transaction Systems found that at the end of 2001, there were at least 23 systems based in the United States that allow dealers or institutional investors to buy or sell municipal securities electronically compared to just 3 such systems in 1997. While dealers are also developing electronic trading platforms that allow retail customers to buy or sell municipal securities online, the development of online retail trading systems for municipal securities lags far behind that for equities.

<sup>5</sup> Rule G-19 provides in pertinent part:

(c) *Suitability of Recommendations.* In recommending to a customer any municipal security transaction, a [dealer] shall have reasonable grounds:

(i) Based upon information available from the issuer of the security or otherwise, and

(ii) Based upon the facts disclosed by such customer or otherwise known about such customer,

For believing that the recommendation is suitable.

<sup>6</sup> Although the focus of this notice is on the application of the suitability rule to electronic communications, much of the discussion is also relevant to more traditional communications, such as discussions made in person, over the telephone, or through postal mail.

<sup>5</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The term "dealer" is used in this notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the