

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-74 and should be submitted on or before December 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4-3513 Filed 12-6-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50775; File No. SR-CBOE-2004-64]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Allocation of N-Second Group Trades Pursuant to Rule 6.45A(c)

December 1, 2004.

On October 14, 2004, the Chicago Board Options Exchange, Inc., ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("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 to eliminate the Designated Primary Market-Maker ("DPM") participation entitlement for trades occurring pursuant to CBOE Rule 6.45A(c). The Commission published the proposed rule change for comment in the **Federal Register** on November 1, 2004.³ The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that by eliminating the DPM participation entitlement for trades occurring pursuant to CBOE Rule 6.45A(c), DPMs will be treated as any other market participant under the rule, allowing all market participants to be on equal footing.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 50583 (October 22, 2004), 69 FR 63418 (November 1, 2004).

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-CBOE-2004-64) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4-3515 Filed 12-6-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50773; File No. SR-MSRB-2004-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Amendments to MSRB Rule G-34, on CUSIP Numbers and New Issue Requirements, To Facilitate Real-Time Transaction Reporting of Trades in New Issue Municipal Securities

December 1, 2004.

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 November 18, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as 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.

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

The MSRB is filing a proposed rule change consisting of an amendment to its rule G-34, on CUSIP numbers and new issue requirements, to facilitate real-time transaction reporting of trades in new issue municipal securities.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule G-34: CUSIP Numbers and New Issue Requirements

(a) New Issue Securities.

(i) Assignment of CUSIP Numbers.

(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ 17 CFR 200.30-3(a)(12).

acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue. The [broker, dealer or municipal securities dealer] *underwriter* shall make such application as promptly as possible, but in no event later than, in the case of negotiated sales, a time sufficient to ensure assignment of a CUSIP number or numbers [on or] prior to the [business day on which] *time* the contract to purchase the securities from the issuer is executed; or, in the case of competitive sales, the [date of award] *time of the first execution of a transaction in the new issue by the underwriter*. A broker, dealer or municipal securities dealer acting as a financial advisor to an issuer in connection with a competitive sale of an issue shall ensure that application for a CUSIP number or numbers is made in sufficient time to permit assignment of CUSIP numbers prior to the [date] *time* of award. [The broker, dealer or municipal securities dealer shall provide to the Board or its designee] *In making an application for CUSIP number assignment*, the following information *shall be provided*:

(1)–(8) No changes.

(B) The information required by subparagraph (i)(A) of this section (a) shall be provided in accordance with the provisions of this subparagraph. [At the time application is made the broker, dealer or municipal securities dealer making such application shall provide to the Board or its designee a] *The application shall include a copy of a notice of sale, official statement, legal opinion, or other similar documentation prepared by or on behalf of the issuer, or portions of such documentation, reflecting the information required by subparagraph (i)(A) of this section (a).* Such documentation may be submitted in preliminary form if no final documentation is available at the time of application. In such event the final documentation, or the relevant portions of such documentation, reflecting any changes in the information required by subparagraph (i)(A) of this section (a) shall be submitted when such documentation becomes available. If no such documentation, whether in preliminary or final form, is available at the time application for CUSIP number assignment is made, such copy shall be provided promptly after the documentation becomes available.

(C) The provisions of paragraph (i) of this section (a) shall not apply with respect to any new issue of municipal

securities on which the issuer or a person acting on behalf of the issuer has submitted an application for assignment of a CUSIP number or numbers. [to such issue to the Board or its designee.]

(D) In the event that the proceeds of the new issue will be used, in whole or in part, to refund an outstanding issue or issues of municipal securities in such a way that part but not all of the outstanding issue or issues previously assigned a single CUSIP number is to be refunded to one or more redemption date(s) and price(s) (or all of an outstanding issue is to be refunded to more than one redemption date and price), the broker, dealer or municipal securities dealer shall apply in writing to the Board or its designee for a reassignment of a CUSIP number to each part of the outstanding issue refunded to a particular redemption date and price and shall provide to the Board or its designee the following information on the issue or issues to be refunded:

(1)–(3) No changes.

The [broker, dealer or municipal securities dealer] *underwriter* also shall provide documentation supporting the information provided pursuant to the requirements of this subparagraph (D).

(ii) Application for Depository Eligibility, CUSIP Number Affixture and Initial Communications. Each [broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter")] shall carry out the following functions:

(A)–(B) No changes.

(C) The underwriter[, on initial trade date,] shall [communicate] *as promptly as possible announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.*

[the following information to syndicate and selling group members]:

(1) No changes.

(2) the [initial trade date] *time of formal award*. For purposes of this subparagraph (a)(ii)(C), [initial trade date] *time of formal award* shall mean, for competitive issues, [either] the [date] time [of] *the issuer announces the award*, [or the first date allocations are made to syndicate or selling group members, whichever date is later,] and, for negotiated issues, [either] the [date] time [on which] the contract to purchase the securities from the issuer is executed[, or the first date allocations

are made to syndicate or selling group members, whichever date is later].

(D) No changes.

(iii) No changes.

(b)–(c) No changes.

* * * * *

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 text 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

1. Purpose

On January 31, 2005, the municipal securities market is scheduled to complete its conversion from overnight "batch" systems for trade reporting to "real-time" systems.³ Beginning on this date, amendments to MSRB Rule G–14, on transaction reporting, become effective to require brokers, dealers and municipal securities dealers (collectively "dealers") to submit most trade reports within 15 minutes after trade execution rather than by midnight on trade date. The purpose of the proposed rule change is to help dealers meet these accelerated trade reporting obligations on the first day of trading in an issue.

Existing Provisions of Rule G–34 Supporting Overnight Trade Reporting

Rule G–14 currently sets a midnight deadline on trade date for dealers to submit trade reports for transaction reporting purposes.⁴ The requirement applies to new issue trades as well as to secondary market trades. Rule G–34, on CUSIP numbers and new issue requirements, requires the underwriter⁵

³ SR-MSRB-2004-07, November 15, 2004. See "Notice of Filing of Implementation Plan for Real-Time Transaction Reporting System," MSRB Notice 2004-36, dated November 17, 2004, at <http://www.msrb.org>. See also "Approval by the SEC of Real-Time Transaction Reporting and Price Dissemination: Rules G-12(f) and G-14," MSRB Notice 2004-29, dated September 2, 2004, at <http://www.msrb.org>.

⁴ See Rule G–14, on transaction reporting, Rule G–14 Procedures, and the Transaction Reporting User Manual, at <http://www.msrb.org>.

⁵ Except where context indicates otherwise, references to "underwriter" in the context of Rule

of a new issue to take several actions so that syndicate and selling group members can report their trades properly at the end of the first day of trading in a new issue. Under the existing requirements of the rule, the underwriter must: (i) Ensure that CUSIP numbers are assigned to the issue by the day that the issue is formally awarded; and (ii) communicate the CUSIP numbers and the initial trade date for the issue to syndicate and selling group members on the initial trade date. This latter provision allows syndicate and selling group members to process and report their own transactions in the issue in a coordinated and correct manner on the initial trade date.

The term "initial trade date" is defined in Rule G-34 as follows: For negotiated issues, it is the date that the BPA is executed or the date that allocations are first made by the underwriter, whichever is later. For competitive sales, it is the date the official award is made by the issuer or the date that allocations are first made by the underwriter, whichever is later. This definition gives some flexibility to the underwriter in determining the initial trade date on which trading in an issue officially starts. For example, if the underwriter chooses not to execute its first transactions⁶ on the formal award date (as might be the case if the BPA is signed at night), it may instead execute its first transactions on the next business day.

Proposed Rule Change to Rule G-34 to Support Real-Time Trade Reporting

Beginning January 31, 2005, the transaction reporting process for municipal securities will convert to a "real-time" process, with most trades being subject to a 15-minute reporting requirement. Two exceptions in Rule G-14 would apply to some transactions done on the first day of trading. Under those exceptions: (i) Dealers that are members of a syndicate or selling group⁷ that effect trades in a new issue at the list offering price may report trades by the end of the first day of trading; and (ii) dealers that are not syndicate or selling group members and

that have not traded an issue in the previous year may report trades within three hours of the time of trade execution.⁸ While many trades executed during the first day of trading will qualify for one of these exemptions, other trades (e.g., "non-list price" trades by syndicate or selling group members) will have to be reported within 15 minutes of trade execution. It also should be noted that the three-hour reporting exception, which will generally be available to dealers outside the underwriting group on the first day of trading, will require accelerated reporting of trades compared with the current end-of-day reporting requirement. The proposed rule change modifies existing provisions of Rule G-34 to ensure that dealers can report trades in a timely manner in this real-time processing environment.

"Time of Formal Award"

Since the timing for trade reports in a real-time environment generally will be measured from the time of trade execution rather than the day that the trade occurs, the proposed rule change replaces the concept of "initial trade date" with "time of formal award." This term, reflecting the earliest time that a trade in a new issue can be executed,⁹ is defined as: (i) For negotiated issues, the time that the BPA is executed; and (ii) for competitive issues, the time of the issuer's official announcement of the award.¹⁰

Communication of CUSIP Numbers, Identifying Information and Time of Formal Award

The proposed rule change will ensure the dissemination of CUSIP numbers, identifying information and the time of formal award is made in a manner to allow real-time reporting of transactions in new issue securities. The proposed rule change states a duty of the underwriter to communicate this information "as promptly as possible" and "in a manner reasonably designed to reach all market participants that may trade the new issue" and also states a firm deadline for this to be done, in any

event, no later than the time that the underwriter executes its first transaction in the issue.¹¹

The requirement to provide this information "as promptly as possible" takes into account that CUSIP numbers may be available well in advance of the time of formal award for a negotiated issue and must be disseminated as soon as practical after they are known. The "time of formal award" for a negotiated issue generally will occur after CUSIP numbers are assigned. This information also should be communicated as soon as it is known, although it is not intended that this would require an underwriter to make such a communication after normal business hours, as might be the case if a BPA is signed at night.¹²

In the case of competitive issues, it is expected that the underwriter winning an auction would communicate the CUSIP numbers and time of formal award, together, shortly after the issuer announces the winner of the auction. However, if there is a lengthy delay between the opening of bids and the formal announcement (marking the time that trades can be executed), the presumed underwriter would be required to disseminate CUSIP numbers as soon as they are available in order to facilitate trade processing once the formal award is announced. As discussed in more detail below, it may be necessary in some cases for the winner of a competitive sale to delay making the required communication of CUSIP numbers (and to delay trade executions) if CUSIP numbers are not pre-assigned to the issue prior to the auction.

It is expected that syndicate and selling group members often will have pending orders in a new issue prior to its formal award and will await the underwriter's communication of the time of formal award before executing trades and reporting them to the transaction reporting system. However, dealers outside the underwriting group also may have pending orders in an issue and need to know the time of

G-34 are meant to include placement agents as well as dealers that purchase securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the underwriter for purposes of Rule G-34. See, e.g., MSRB Rule G-34(a)(ii) and G-34(a)(iii).

⁶ The term "allocations" used in the current language of Rule G-34 refers to the "final" allocations by the underwriter, which are confirmable transactions.

⁷ References to "syndicate and selling group members" in this context are meant to include managers of syndicates as well as sole underwriters or placement agents in non-syndicated offerings.

⁸ See "Real-Time Transaction Reporting: Notice of Filing of Proposed Rule Change to Rules G-14 and G-12(f)," MSRB Notice 2004-13, dated June 1, 2004, on <http://www.msrb.org>.

⁹ See MSRB Rule G-12 Interpretive Letter, "Confirmation: Mailing of WAI confirmation," dated April 30, 1982, on <http://www.msrb.org>.

¹⁰ Although the time of formal award represents the earliest time that a trade in a new issue can be executed, the underwriter is not required by MSRB rules to execute trades at that time. In cases in which a formal award occurs after the end of the business day, or at night, for example, the underwriter might choose to execute its first transactions on the next business day, just as is permitted under the current language of Rule G-34.

¹¹ The proposed rule change thus states a deadline similar to the one that exists currently in the rule that requires communication of information to be made on "initial trade date." The proposed rule change phrases the deadline in terms of "first execution of a transaction by the underwriter" rather than by use of the term "first date that allocations are made." This avoids the ambiguity of the term "allocations," which are sometimes conditional on the formal award of an issue.

¹² As discussed, underwriters should be aware that, when other dealers have pending orders in a new issue, those dealers will be waiting for the underwriter's announcement prior to executing their own transactions. Therefore, it is important that information on the time of formal award and CUSIP numbers not be delayed unreasonably.

formal award.¹³ Under the existing provisions of Rule G-34, dealers that are not in the underwriting group do not receive a communication from the underwriter notifying them of the "initial trade date" of the issue. The proposed rule change will help ensure that these dealers receive the necessary information to execute trades by requiring underwriters to disseminate the information in "a manner reasonably designed to reach market participants that may trade the issue."¹⁴

The proposed rule change does not specify the particular method that must be used to disseminate information "in a manner reasonably designed to reach market participants that may trade the issue." For large issues that are widely sold in the market, it effectively would require dissemination of the information on an electronic platform that provides real-time bond information and that is generally accessible to dealers. Unlike the current provision in Rule G-34, the requirement to disseminate information applies to sole underwriters as well as to syndicate managers. However, the proposed rule change also contemplates that the method of dissemination be appropriate to the type of offering. For example, in the case of a limited placement or a small offering where the underwriter knows all of the parties that will have trades on the first day of trading, notification to those parties would be sufficient to satisfy the rule and further dissemination of the information would not be necessary.

As discussed below, industry commentators stated that existing information service providers are able to accommodate the dissemination of information necessary under the rule. Thus the proposed rule change does not specify or suggest particular electronic platforms by which a required dissemination should be made.

Timing for CUSIP Number Assignment

A final provision of the proposed rule change is a modification in the underwriter's deadline for CUSIP

number assignment.¹⁵ For negotiated issues, the proposed rule change advances the existing deadline that assignments be made by the "business day on which the BPA is signed" to a requirement that numbers be assigned "by the time of formal award." For competitive issues, the proposed rule change alters the deadline from "date of award" to "the first execution of a transaction by the underwriter." For various reasons CUSIP numbers are not always pre-assigned to competitively bid issues.¹⁶ In a real-time environment, it may not be possible for the winning underwriter to have the CUSIP numbers assigned by the time of formal award under these circumstances. During normal business hours, the underwriter in these situations generally can obtain CUSIP numbers within an hour or two, at which time notifications would be made and trade executions in the issue could begin.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,¹⁷ which requires that the rules of the MSRB shall "be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination 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." * * *¹⁸

The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating pricing data on a contemporaneous, real-time, basis. The proposed rule change will facilitate the processing of transactions in new issue municipal securities so that such transactions can be reported to the MSRB in real-time and prices of such transactions can be disseminated on a contemporaneous basis.

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

The MSRB does not believe that the proposed rule change will result in any

burden on competition among dealers in that it applies equally to all dealers in municipal securities.

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

Comments in the proposed rule change were solicited in a notice dated June 18, 2004 ("June 2004 Notice").¹⁹ The MSRB received two comment letters. Comments were received from:

The Bond Market Association ("BMA").²⁰

Standard and Poor's CUSIP Service Bureau ("CUSIP").²¹

BMA indicated general support for the proposed rule change. BMA "fully support[s] dissemination of CUSIP numbers to the current information service providers as soon as practicable after they are known and in no case later than the 'time of first execution.'" CUSIP, while neutral, suggested industry practices that would help implement the proposed rule change with respect to CUSIP number availability. CUSIP recommended applying as early as possible for CUSIP number assignment and states that it "is not limited in any way from assigning CUSIP numbers prior to the sale of a new municipal offering so long as the [CUSIP Service Bureau] is properly notified and a preliminary official statement or similar offering document is provided." To expedite assignment of CUSIP numbers, CUSIP recommended that underwriters submit requests for CUSIP numbers electronically rather than by fax and stated that it is considering enhancements to its internet-based application process to further expedite the assignment and availability of CUSIP numbers.

Dissemination of Information by Underwriters

In the June 2004 Notice the MSRB specifically requested comment on whether electronic venues exist in the marketplace by which underwriters could make announcements that provide reasonable access to information about a new issue to all dealers. Such a venue would be necessary to communicate CUSIP

¹³ Although trade executions and trade confirmations are not permitted prior to the time of formal award, dealers often solicit orders, accept orders and (after final pricing decisions are made) conditionally allocate to orders, even though the formal award has not yet occurred. The proposed rule change is designed to facilitate the flow of information so that these dealers will know the earliest time that these "conditional trading commitments" can be executed in a new issue and will have the information necessary to ensure that trade reports can be made in a timely manner after execution.

¹⁴ Accordingly, the dissemination requirement in the proposed rule change applies to sole underwriters as well as to syndicate managers.

¹⁵ The proposed rule change also makes technical changes for purposes of clarity.

¹⁶ The proposed rule change does not affect existing provisions in Rule G-34 that require a dealer acting as financial advisor in connection with a competitive sale to ensure that CUSIP numbers are pre-assigned to the issue. Not all financial advisors, however, are dealers.

¹⁷ 15 U.S.C. 78o-4(b)(2)(C).

¹⁸ *Id.*

¹⁹ "Notice Requesting Comment on Draft Amendments to Rule G-34 to Facilitate Real-Time Transaction Reporting and Explaining Time of Trade for Reporting New Issue Trades," MSRB Notice 2004-18, dated June 18, 2004, on <http://www.msrb.org>.

²⁰ Letter to Justin R. Pica, MSRB, from Leslie M. Norwood, The Bond Market Association, dated August 18, 2004.

²¹ Letter to Justin R. Pica, MSRB, from Harry J. Lopez and Gerard Faulkner, Standard and Poor's CUSIP Service Bureau, dated August 17, 2004.

numbers, identifying information and the time of formal award to dealers outside of the syndicate and selling group that may have "conditional trading commitments" in the new issue. The MSRB stated in the June 2004 Notice that, if such a venue did not currently exist, or if there would be problems in making effective announcements through existing venues, the MSRB could offer to provide such a special-purpose solution.

The BMA "strongly supports the use of current information service providers to carry this information, and feels that additional systems, emails, newsgroup postings, and processes should not be implemented." In its comment letter, the BMA stated that it has set up a "G-34 Task Force" to work with current information service providers "to: (a) Increase awareness about the need for quick and accurate dissemination of final CUSIP numbers, the "time of formal award" and the "time of first execution," and (b) to include new fields in their systems, if necessary, to accommodate the dissemination of this information from underwriters to market participants on a real-time basis." CUSIP stated that it would "consider offering a new service whereby [CUSIP Service Bureau] communicates newly assigned municipal CUSIP numbers to all syndicate members and dealers outside of the syndicate group."

Based on the comments received indicating that existing industry systems can provide broad real-time dissemination of information to industry members, the MSRB has decided not to offer to provide a special-purpose solution for making announcements to market participants. However, the MSRB will review the operation of industry systems for disseminating information and will readdress this issue if necessary in the future.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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 Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2004-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-MSRB-2004-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2004-08 and should be submitted on or before December 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Jill M. Peterson,

Assistant Secretary.

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²² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50749; File No. SR-NASD-2004-022]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Corporate Financing Rule and Shelf Offerings of Securities

November 29, 2004.

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 February 4, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On May 4, 2004, NASD filed Amendment No. 1 to its proposed rule change, which replaced and superseded the original rule filing in its entirety. On July 16, 2004, NASD filed Amendment No. 2 to its proposed rule change.³ On October 12, 2004, NASD filed Amendment No. 3 to its proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing to amend NASD Rules 2710, 2810, IM-2440, and Schedule A to the NASD By-Laws to address the filing requirements and the regulation of public offerings of securities registered with the Commission and offered by members pursuant to SEC Rule 415 of Regulation C under the Securities Act of 1933 ("SEC Rule 415") ("shelf offerings"). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 6—No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 made several technical corrections and modified the Market Transactions Exception contained in the proposed rule change.

⁴ Amendment No. 3 corrected clerical and typographical errors contained in Amendment No. 2.