

transferring a membership to a trust or the grantor of the trust purchasing a membership) would be required during the grantor's lifetime or existence (in the case of a non-natural person) to be a beneficiary of the trust. In the event that the trust terminates or is amended such that it no longer qualifies to own an Exchange membership, any memberships held by the trust will revert to the grantor.

As is the case with pension trusts, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own the membership subject to the Exchange Constitution and Rules, as well as certain other limitations and indemnifications, and will also be required to provide a legal opinion confirming that the trust was validly created, is authorized to own a membership and that the trustee is vested with all necessary authority to either appoint a nominee to operate the seat on behalf of the trust and/or lease the seat, as well as to enter into the requisite agreement. Additionally, the trustee and grantor will be required to become allied members or approved persons of the Exchange, as applicable.

The Exchange believes that permitting broader trust ownership of memberships will enable seat owners to take advantage of certain estate planning and tax benefits, and will also potentially provide increased access to capital. The Chicago Board Options Exchange permits trust seat ownership.<sup>4</sup>

## 2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

Amex does not believe that the proposed rule change, as amended, will

result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Amex neither solicited nor received written comments with respect to the proposed rule change, as amended.

### 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 Exchange consents, the Commission will:

- (a) By order approve such proposed rule change, as amended; or
- (b) institute proceedings to determine whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-003 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-Amex-2005-003. 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 principal office of Amex. 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-Amex-2005-003 and should be submitted on or before July 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-3349 Filed 6-27-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51892; File No. SR-MSRB-2005-08]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Regarding Amendments to Rule G-40, on Electronic Mail Contacts, and Form G-40

June 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 26, 2005, 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 with the Commission a proposed rule change consisting of amendments to Rule G-40, on electronic mail contacts, and Form G-40 that would: (i) Eliminate the need

<sup>4</sup> A reference in the proposed rule change that the Philadelphia Stock Exchange, Inc. permits trust seat ownership has not been included in this notice pursuant to a telephone conversation between Ivonne Natal, Associate General Counsel, Amex and Geraldine Idrizi, Attorney, Division of Market Regulation, Commission, on June 20, 2005.

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

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

<sup>7</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.

for paper submission of original forms; (ii) require each broker, dealer and municipal securities dealer (collectively "dealers") to maintain an Internet electronic mail account to permit communication with the MSRB; and (iii) require each dealer to review and, if necessary, update its Primary Contact information each calendar quarter. The text of the proposed rule change, as well as proposed amended Form G-40, are available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room.

## 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

The events of September 11, 2001 and the weeks that followed, emphasized the importance of, and need for an efficient and reliable means of official communication between regulators and the industry. Establishing a reliable method for electronic communication was necessary to allow the MSRB to efficiently alert dealers to official communications, including time-sensitive developments, rule changes, notices, etc., as well as to facilitate dealers' internal distribution of such information. In addition, the MSRB discontinued publication of *MSRB Reports* in 2002; MSRB notices have since been available exclusively on the MSRB's Web site at <http://www.msrb.org>. Thus, in 2002 the MSRB adopted Rule G-40, on e-mail contacts, to ensure that such notices and other MSRB communications continued to reach each dealer.<sup>3</sup>

Rule G-40 requires dealers to use Form G-40 to appoint a "Primary Contact" for purposes of electronic communication between the dealer and the MSRB. The Primary Contact must be either a Series 53-registered municipal

securities principal or a Series 51-registered municipal fund securities limited principal.<sup>4</sup> Currently, dealers must submit their original Forms G-40 by mail. Thereafter, any changes to the forms may be made by mail or electronically through the dealer's electronic G-40 account using the appropriate user ID and password.

As the process of electronic communication between dealers and the MSRB has evolved over the past few years, it has become apparent that certain changes and enhancements are now required to ensure that this process remains both efficient and practical. In addition, the MSRB has observed that certain differences exist between Rule G-40 and similar NASD requirements. Whenever possible, the MSRB attempts to adopt similar provisions and comparable language to NASD rules in order to facilitate dealer understanding of and compliance with such provisions, as well as inspection and enforcement. NASD requires that each member appoint an "executive representative" to, among other things, serve as the official contact person between the member and the NASD.<sup>5</sup> NASD also requires that the executive representative maintain an Internet e-mail account for communication with NASD. And in May 2004, NASD Rule 1150 became effective which requires NASD members to review and, if necessary, update their executive representative designation and contact information within 17 business days after the end of each calendar quarter.<sup>6</sup>

The MSRB believes that Rule G-40 should contain an update provision similar to NASD's, and that, like NASD, its entire process should be electronic. Thus, the proposed amendments to Rule G-40 would require dealers to maintain an Internet e-mail account to permit communication with the MSRB, and would require that all Form G-40 submissions—initial forms and subsequent updates and amendments—be completed electronically using the appropriate user ID and password. In addition, the amendments would require dealers to review and, if necessary, update information on their Primary Contact within 17 business days after the end of each calendar

<sup>4</sup> Dealers may also appoint an "Optional Contact" and this person does *not* have to be a registered principal.

<sup>5</sup> Article IV, Section 3 of the NASD By-Laws requires members to appoint and certify to NASD one "executive representative" to represent, vote and act for the member in all NASD affairs. The executive representative must be a member of the firm's senior management and a registered principal of the member.

<sup>6</sup> SEC Release No. 34-49497 (March 29, 2004), 69 FR 17723.

quarter. The proposed amendments to Rule G-40 necessitate certain changes to Form G-40, including an indication that electronic submission is required.

#### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(I) of the Act,<sup>7</sup> which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB believes that the proposed rule change is consistent with this provision in that it will facilitate effective electronic communication between dealers and the MSRB, and that by ensuring MSRB requirements for electronic communication are substantially similar to NASD requirements, it will facilitate dealer understanding of, and compliance with, these requirements.

### 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 not necessary or appropriate in furtherance of the purposes of the 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 on the proposal.

## 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:

<sup>7</sup> 15 U.S.C. 78o-4(b)(2)(I).

<sup>3</sup> Rule G-40 was approved in SEC Release No. 34-46043 (June 6, 2002), 67 FR 40762.

*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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2005-08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-MSRB-2005-08. 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-2005-08 and should be submitted on or before July 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-3346 Filed 6-27-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51869; File No. SR-NASD-2005-051]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Create an Enterprise License Fee for the TotalView Entitlement**

June 17, 2005

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 April 13, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 3, 2005, Nasdaq amended the proposed rule change. 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**

Nasdaq proposes to modify NASD Rule 7010(q)(1)(A) to establish an enterprise license option for the TotalView entitlement. The text of the proposed rule change is set forth below. Proposed additions are in italics; proposed deletions are in [brackets].<sup>3</sup>

\* \* \* \* \*

**7010. System Services**

(a)-(p) No change

**(q) Nasdaq TotalView**

(1) No Change.

(A) (i) Except as provided in (q)(1)(A)(ii) and (iii), for the TotalView entitlement there shall be a \$70 monthly charge for each controlled device.

(ii) *Except as provided in (q)(1)(A)(iii), a non-professional subscriber, as defined in Rule 7010(e), shall pay \$14 per month for each controlled device.*

*(iii) As an alternative to (q)(1)(A)(i) and (ii), a broker-dealer distributor may purchase an enterprise license at a rate of \$25,000 for non-professional subscribers or \$100,000 per month for*

*both professional and non-professional subscribers. The enterprise license entitles a distributor to provide TotalView to an unlimited number of internal users, whether such users receive the data directly or through third-party vendors, and external users with whom the firm has a brokerage relationship. The enterprise license shall not apply to relevant Level 1 and NQDS fees.*

(B)-(C) No Change.

(2)-(4) No change

(r)-(v) No Change.

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, 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. Nasdaq 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**

Nasdaq continues to seek broader distribution of its TotalView data entitlement to facilitate broader exposure of orders in the Nasdaq Market Center and improve customer execution quality. To facilitate this objective, Nasdaq is seeking ways to reduce the cost of providing TotalView data to large numbers of a broker-dealer's customer base. In addition, as many brokers augment their traditional institutional customer relationship tools with one or more electronic software applications, the need to provide cost-efficient market data on those applications has become increasingly important.

Accordingly, Nasdaq proposes to establish a program whereby a broker-dealer distributor could obtain an enterprise license for the distribution of the TotalView market data entitlement for a fixed cost of either \$25,000 per month for non-professional subscribers or of \$100,000 per month for broker-dealer distributors that serve both non-professional and professional subscribers. This enterprise license pricing structure would mirror the pricing structure already established for

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

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

<sup>3</sup> The proposed changes are marked from NASD Rule 7010 as it appears in the NASD Manual available at [www.nasd.com](http://www.nasd.com).

<sup>8</sup> 17 CFR 200.30-3(a)(12).