

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52967; File No. SR-MSRB-2005-16]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to MSRB Rule G-14 RTRS Procedures, Paragraph (a)(ii)(C) To Extend the Expiration Date of the Three Hour Exception

December 16, 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 December 13, 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 and II 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 to paragraph (a)(ii)(C) of Rule G-14 RTRS Procedures under Rule G-14 Reports of Sales or Purchases, to extend the expiration date of the three hour exception to the 15 minute reporting deadline. The text of the proposed rule change is 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 statutory 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

MSRB Rule G-14 trade reporting procedures require that transactions effected with a time of trade during the hours of the Real-Time Transaction Reporting System ("RTRS") business day be reported within 15 minutes of the time of trade to an RTRS Portal. Under MSRB Rule G-14, there are three exceptions to this 15 minute reporting requirement. The exception addressed by the proposed rule change allows a dealer three hours to report a security that the dealer has not traded in the previous year.<sup>3</sup> This exception is not available to a managing underwriter or syndicate member. The MSRB included a sunset date of January 31, 2006 for the three hour exception in order to provide incentive for information vendors and the industry to move to real-time techniques for securities master updates. This exception was designed to give a dealer time to add a security to its securities master file so that a trade can be reported through the dealer's automated processing systems.

Historically, dealers have not been able to maintain a database of formatted municipal securities information for the full universe of approximately 1.5 million municipal securities due to the cost of mainframe storage. A securities master file contains the information about a municipal security issue that is necessary for a dealer to be able to process transactions in the issue. It includes such items as interest rate, dated date, interest payment cycle, put and call schedules. This data is stored in the dealer's trade processing system in a database commonly called the "securities master file."<sup>4</sup> The dealer's securities master file sometimes contains information only for securities held in custody for customers and for

securities that have been recently traded. In that case, if a dealer trades a secondary market security that is not in its securities master file, the relevant securities information must be obtained from a vendor by the dealer before the trade can be processed.

Since implementation of real-time transaction reporting on January 31, 2005, the municipal securities industry has made some progress in improving timely access to information on municipal securities. Some dealers and service bureaus have elected to store the full universe of municipal securities in their securities master files. In addition, some links have been set up so that dealers are able to obtain a real-time update from a vendor upon request after an issue is traded for the first time. Notwithstanding some progress, dealers have indicated that difficulty continues to exist in ensuring adequate real-time access to securities data for the 1.5 million outstanding municipal securities and are concerned about the upcoming expiration of the three hour exception. This delay in obtaining relevant security information can cause the dealer's trade to be reported as late. The Bond Market Association ("TBMA") has requested that MSRB extend the three hour exception to provide additional time for the industry to develop solutions to the problems of disseminating municipal securities information.

The MSRB believes that the industry can complete the necessary systems changes to address access to securities information in the secondary market by December 29, 2006. The MSRB does not intend to provide any additional extensions beyond this date. This date will allow the municipal securities industry to work on solutions for dealers to obtain municipal securities information in a timely manner from information vendors in order to process trades not in the dealer's securities master file.

For new issue transactions, a dealer's access to necessary securities information depends not only on its link with the information vendor but also on whether that vendor itself has the information on the new issue. Vendors currently obtain much of their new issue information through voluntary cooperation from underwriters. This process does not always result in all the vendors having the necessary securities information by the time of formal award when trade executions begin. Dealers trading a new issue for the first time need the three hour exception for the 15 minute trade reporting for their first trades in a new issue because the securities information is not available at

<sup>3</sup> The other two exceptions to the 15 minute reporting rule are: (1) that syndicate managers, syndicate members and selling group members that effect trades in new issues on the first day of trading at the list offering price are permitted to report these trades by the end of the day on which they were executed; and (2) that a dealer effecting a trade in a short-term instrument under nine months in effective maturity (including variable rate instruments, auction rate products, and commercial paper) shall report such trades by the end of the business day on which the trades were executed. See MSRB Rule G-14 RTRS Procedures (a)(ii)(A), (B).

<sup>4</sup> Many dealers use service bureaus for various trade processing functions, including the maintenance of securities master files. Securities master file update procedures for service bureaus and the challenges in moving to a real-time environment for service bureaus are the same as those described for dealers.

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

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

the time the trade is executed.<sup>5</sup> The industry has expressed concern that it needs more time to work on the current infrastructure for the collection and dissemination of securities information in order to move towards real-time techniques to update securities master files and thereby allow dealers to report trades within 15 minutes. Accordingly, the MSRB is proposing an extension of the three hour exception for when, as and if issued transactions to December 31, 2007.

In addition, in order to expedite the process of moving to real-time techniques for securities master updates by vendors and the industry with a particular emphasis on newly issued securities, TBMA and The Depository Trust Company ("DTC") are currently working on a project that will address inefficiencies in the collection of new information securities data. As proposed, DTC will act as a central collection point for standardized electronic files of new issue information provided by underwriters. DTC then would provide the information in real-time to information vendors. Underwriters would provide the information to DTC on a specific timeframe. This project is scheduled for implementation in the last half of 2007. It will make it possible for dealers to report new issue trades earlier and will eliminate the need for the three hour exception for new issue trades. An extension of the three hour exception for when, as and if issued transactions to December 31, 2007, will also allow time for this project to be implemented and for initial operational details to be addressed before the 15 minute reporting requirement becomes effective for trades that currently qualify for the three hour exception.

The proposed rule would revise MSRB Rule G-14 RTRS Procedures (a)(ii)(C) by deleting the language regarding the expiration of the three hour exception on January 31, 2006 and replacing the language to state that for when, as and if issued transactions, the three hour exception to the 15 minute reporting rule will expire on December 31, 2007; and for all other transactions, the exception will expire on December 29, 2006.

<sup>5</sup> In the new issue market, information vendors seek to collect information on each issue and deliver it to customers in time for trade reporting in the new issue. There are several challenges for vendors and dealers to meet the reporting deadlines. For example, there are approximately 15,000 new municipal issues that must be set up in databases each month. Another problem for the industry is the fact that approximately 85 different information fields for each issue must be successfully gathered, which in large part depends on the timely cooperation of the underwriters.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,<sup>6</sup> 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."<sup>7</sup>

The MSRB believes that the proposed rule change is consistent with the Act because it will allow for the municipal securities industry to produce increased accurate trade reporting and transparency, and will enhance surveillance data used by enforcement agencies. This proposed rule change will foster cooperation and coordination within the municipal securities industry with the ultimate goal of disseminating accurate real-time pricing data.

### *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 since it would apply equally to all brokers, dealers and municipal securities dealers.

### *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 this proposed rule change.

## III. Commission's Findings and Order Granting Accelerated Approval of 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 the MSRB<sup>8</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.<sup>9</sup> Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to

<sup>6</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>7</sup> *Id.*

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78o-4(b)(2)(C).

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.<sup>10</sup>

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that (i) the three hour exception to the 15-minute transaction reporting will automatically expire on January 31, 2006; and (ii) the industry needs more time to correct the inadequacies in the current industry infrastructure for collecting and disseminating securities information so as to implement real-time techniques for securities master updates. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve the proposed change on an accelerated basis.

## 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-MSRB-2005-16 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-2005-16. 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

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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 the MSRB. 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-2005-16 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52958; File No. SR-NYSE-2005-73]

### Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Rule 600, Relating To Arbitration

December 15, 2005.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 20, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The proposed rule change consists of the rescission of Exchange Rule 600(g), a pilot rule relating to the waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitrations.

#### 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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 July 1, 2002, the Exchange suspended the appointment of arbitrators for cases pending in California as a result of the purported application of the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the "California Standards") to Exchange arbitrations and arbitrators. The Exchange proposed Rule 600(g) in response to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission.<sup>4</sup> Under Rule 600(g), the Exchange implemented a pilot rule whereby parties to an arbitration could in certain circumstances request that a hearing be held outside California or waive application of the California Standards and hold the hearing in California. The Exchange and NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") became involved in a number of legal actions challenging the California Standards. On March 1, 2005, the United States Court of Appeals for the Ninth Circuit issued a decision in *Credit Suisse First Boston Corp. v Grunwald*<sup>5</sup> in which it held that the provisions of the Act preempt application of the California Standards to NASD Dispute Resolution arbitrations. On May 23, 2005, the

Supreme Court of California issued a decision in *Jevne v. The Superior Court of Los Angeles County*<sup>6</sup> in which it also held that the provisions of the Act preempt application of the California Standards to NASD Dispute Resolution arbitrations. Accordingly, the Exchange believes that it can once again appoint arbitrators and hold hearings in California without requiring a waiver of the California Standards.

The proposed rule change is intended to rescind Rule 600(g), which expired on September 30, 2005, as it is no longer necessary, in light of the court decisions referenced above.

###### 2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act in general and section 6(b)(5) of the Act<sup>8</sup> in particular in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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

The NYSE does not believe that the proposed rule change will impose 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

The NYSE has neither solicited nor received written comments on the proposed rule change.

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

The Commission has determined to approve the proposed rule change on an accelerated basis, thereby permitting the Exchange to rescind Rule 600(g) promptly.<sup>9</sup> The Commission finds that the proposed rule change is consistent with the requirements of section 6(b)<sup>10</sup> of the Act in general and section 6(b)(5) of the Act<sup>11</sup> in particular. Specifically,

<sup>6</sup> S121532 (35 Cal. 4th 935) (CA Sup. Ct. May 23, 2005).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> The Exchange requested accelerated approval of the proposed rule change. Conversation between Daniel Beyda, Chief Administrative Officer of NYSE Arbitration, NYSE, and Elizabeth MacDonald, Special Counsel, Division of Market Regulation, on December 15, 2005.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Exchange Act Release No. 46816 (November 12, 2002); 67 FR 69793 (November 19, 2002) (SR-NYSE-2002-56).

<sup>5</sup> 400 F.3d 1119 (9th Cir. 2005).