

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the amendment to CBOE's rules to permit persons who had been acting in an exchange trading floor capacity within the last year to become members without completing the Orientation Program and passing the Qualification Examination again is a reasonable expansion of the exception to the rule. The functions performed by such persons are similar to those performed by members possessing an authorized trading function.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2007-15), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55792, File No. SR-MSRB-2006-10]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to Rule G-27, on Supervision, Rule G-8, on Recordkeeping, and Rule G-9, on Record Retention

May 22, 2007.

On November 24, 2006, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change consisting of amendments to Rule G-27, on supervision, and the related recordkeeping and record retention requirements of Rules G-8 and G-9. The MSRB proposed that the amendments become effective six months after Commission approval of the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 20, 2006.<sup>3</sup> The Commission received two comment letters regarding the proposal.<sup>4</sup> On May 7, 2007, the MSRB filed a response to the comment letters.<sup>5</sup> This order approves the proposed rule change.

The proposed amendments to Rule G-27 incorporate most of the NASD requirements contained in its Rules 3010 (Supervision) and 3012 (Supervisory Control System) in order to promote regulatory consistency and make these requirements specifically applicable to the municipal securities activities of securities firms and bank dealers. The MSRB intends generally that the provisions of Rule G-27 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise. The MSRB believes that adopting most of the requirements of NASD Rules 3010 and 3012 will help ensure a coordinated regulatory approach in the area of

supervision, and will facilitate inspection and enforcement.

SIFMA's comment letter requests clarification that the proposed rule change would allow principals to delegate day-to-day supervisory activities to non-principals. SIFMA points out that under current MSRB Rule G-27 and NASD Rule 3010, principals regularly delegate day-to-day supervisory activities to appropriately trained employees who are not principals even though the principals are ultimately responsible for supervision.

In response to SIFMA's request for clarification concerning delegation, the MSRB notes that the proposed rule change states that the MSRB intends generally that the provisions of Rule G-27 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise. Thus, relevant NASD interpretations would be presumed to apply to the comparable MSRB provision, subject to the MSRB's right to make distinctions when necessary and appropriate. The MSRB also notes that NASD has previously stated that "certain supervisory tasks may be delegated to a registered representative. However, in all cases, ultimate supervisory responsibility \* \* \* must be assigned to one or more appropriately registered principals." [Emphasis in original.]<sup>6</sup> The MSRB believes, and the Commission concurs, that this guidance applies equally to Rule G-27—both as currently written and pursuant to the proposed rule change.

Banc of America's comment letter supports the proposed rule change in principle but believes that the proposed rule change will, if adopted, create an unnecessary hardship on dealers in municipal securities, and ultimately to issuers of municipal securities, in one specific area. Banc of America understands the requirement to designate one or more appropriately registered principals in each office of supervisory jurisdiction ("OSJ") to mean that an appropriately registered municipal securities principal must be located on site in each OSJ. However, Banc of America believes this requirement is not practical in instances where a particular office's activities are such that the office meets the definition of an OSJ in the proposed rule change but there is a very small number of registered associates located in that office (and in many cases, only one). Banc of America further states that

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

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

<sup>3</sup> See Securities Exchange Act Release No. 54930 (December 13, 2006), 71 FR 76400 (December 20, 2006).

<sup>4</sup> See letter from Leslie M. Norwood, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated January 31, 2007, and letter from Tab T. Stewart, Assistant General Counsel, Banc of America Securities ("Banc of America"), dated January 31, 2007.

<sup>5</sup> See letter from Jill C. Finder, Associate General Counsel, MSRB, to Nancy M. Morris, Secretary, Commission, dated May 7, 2007.

<sup>6</sup> See NASD Notice to Members 99-45 (June 1999), which provided guidance on supervisory responsibilities.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

requiring each small-staff OSJ to have an on-site municipal securities principal for supervision of the activities in that office adds an undue burden to dealers that, in many cases, is either impractical or not cost effective. Banc of America believes that if the proposed rule change is approved, dealers may be forced to close certain regional offices, since adding staff would not be cost effective; in turn, this could lead to a reduction in financing services, and/or increased borrowing costs, to issuers of municipal securities.

The MSRB states in its response that under current NASD requirements and the MSRB's proposed amendments, dealers must designate one or more appropriately registered principals in each OSJ and each such principal must be located on site in each OSJ. The MSRB understands that in the equities market, which is subject to NASD's supervisory requirements, there are many one-person offices which, as OSJs, are involved in structuring corporate financing. The MSRB further understands that such functions, when performed at an OSJ, are significant enough to warrant supervision by an on-site principal who is permanently located in that office. The MSRB concluded that in the case of the one-person OSJ described by Banc of America, the practical effect of the proposed rule change on bank dealers would be to require that one person to be registered as a municipal securities principal, just as NASD requires securities firms to register as a principal any one-person OSJ. The MSRB further noted that the purpose of the proposed rule change is to promote regulatory consistency, and that the MSRB does not believe that the situation described by Banc of America justifies deviating from this purpose. After considering Banc of America's comment letter and the MSRB's response, the Commission finds that the proposed rule change conforms Rule G-27 to the relevant NASD rules on supervision and does not believe that the proposed rule change is inconsistent with the Act.

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>7</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act<sup>8</sup> and the rules and regulations thereunder. 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 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>9</sup> In particular, the Commission finds that, by conforming Rule G-27 to the relevant NASD rules on supervision and thereby making such requirements specifically applicable to the municipal securities activities of securities firms and bank dealers, the proposed rule change will promote regulatory consistency by facilitating dealer compliance with such requirements, as well as by facilitating the inspection and enforcement thereof. The proposal will be effective six months after Commission approval, as requested by the MSRB.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-MSRB-2006-10) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55790; File No. SR-NASDAQ-2007-039]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change to Modify the Distributor Fee for Nasdaq Index Weighting Information

May 21, 2007.

On April 4, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to decrease the distributor fee for the lowest pricing tier for Nasdaq Index

Weighting Information. According to Nasdaq, the lowest pricing tier is the most common option selected by existing customers. The proposed rule change was published for comment in the **Federal Register** on April 18, 2007.<sup>3</sup> The Commission received no comments on 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 that are applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of Section 6(b)(4) of the Act,<sup>5</sup> which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls, and that it not unfairly discriminate between customers, issuers, brokers, or dealers. Nasdaq proposes to decrease the distributor fee for the tier that encompasses one to 500 subscribers for Nasdaq Index Weighting Information from \$1,000 to \$300 in the case of unlimited frequency of distribution, and from \$500 to \$275 in the case of distribution once a month, quarter, or year. The remaining tiers of the fee schedules for Nasdaq Index Weighting Information (*i.e.*, fees for 501-999, 1,000-4,999, 5,000-9,999, and 10,000+ subscribers) will not change under this proposal. The Commission believes that decreasing the distributor fee for the lowest pricing tier for Nasdaq Index Weighting Information is beneficial to the recipients of such data and should encourage its broader distribution.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NASDAQ-2007-039) be, and hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 55620 (April 12, 2007), 72 FR 19569.

<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>7</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>8</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.