For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61110; File No. SR–MSRB–2009–17]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of (i) Amendments to Rule G–8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers), Rule G–9 (Preservation of Records), and Rule G–11 (New Issue Syndicate Practices); (ii) a Proposed Interpretation of Rule G–17 (Conduct of Municipal Securities Activities); and (iii) the Deletion of a Previous Rule G–17 Interpretive Notice

December 3, 2009.

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, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 has filed with the Commission a proposed rule change consisting of (i) proposed amendments to Rule G–8 (books and records to be made by brokers, dealers and municipal securities dealers), Rule G–9 (preservation of records), and Rule G–11, (new issue syndicate practices); (ii) a proposed interpretation (the ''proposed interpretive notice'') of Rule G–17 (conduct of municipal securities activities); and (iii) the deletion of a previous Rule G–17 interpretive notice on priority of orders dated December 22, 1987 (the ''1987 interpretive notice''). The MSRB requested that the proposed rule change become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) occurs more than 60 days after approval of the proposed rule change by the SEC.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), 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. 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 proposed amendments to Rule G–11 would: (1) Apply the rule to all primary offerings, not just those for which a syndicate is formed; (2) require that all dealers (not just syndicate members) disclose whether their orders are for their own account or a related account; and (3) require that priority be given to orders from customers over orders from syndicate members for their own accounts or orders from their respective related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering, unless the issuer otherwise agrees or it is in the best interests of the syndicate not to follow that order of priority.

The proposed amendments to Rules G–8 and G–9 would require that records be retained for all primary offerings of: (1) All orders, whether or not filled; (2) whether there was a retail order period and, if so, the issuer's definition of ''retail;'' and (3) those instances when the syndicate manager allocated bonds other than in accordance with the priority provisions of Rule G–11 and the specific reasons why it was in the best interests of the syndicate to do so.

The proposed interpretive notice would provide that violation of these priority provisions would be a violation of Rule G–17, subject to the same exceptions as provided in proposed amended Rule G–11. It also would provide that Rule G–17 does not require that customer orders be accorded greater priority than orders from dealers that are not syndicate members or their respective related accounts. The proposed interpretive notice also would provide that it would be a violation of Rule G–17 for a dealer to allocate securities in a manner that is inconsistent with an issuer's requirements for a retail order period without the issuer's consent. Issuance of the notice, in addition to the amendments to Rule G–11, is consistent with previous guidance issued by the Board that all activities of dealers must be viewed in light of the basic fair dealing principles of Rule G–17, regardless of whether other MSRB rules establish additional requirements on dealers.[3]

The guidance set forth in the proposed interpretive notice arose out of the Board's ongoing review of its General Rules as well as concerns expressed by institutional investors that their orders were sometimes not filled in whole or in part during a primary offering, yet the bonds became available shortly thereafter in the secondary market. They attributed that problem to two causes: first, some retail dealers were allowed to place orders in retail order periods without going away orders and second, syndicate members, their affiliates, and their respective related accounts were allowed to buy bonds in the primary offering for their own account even though other orders remained unfilled. There was also concern that these two factors could contribute to restrictions on access to new issues by retail investors, in a manner inconsistent with the issuer's intent.

The MSRB had last addressed the priority of orders in the 1987 interpretive notice.[4] That guidance interpreted Rule G–17 to require generally that customer orders be filled before orders from dealers and dealer-related accounts. Dealer-related accounts were defined to ''include a municipal securities investment portfolio, arbitrage account, or secondary trading account of a syndicate member, a municipal securities investment trust sponsored by a syndicate member, or an accumulation account established in connection with such a municipal securities investment trust.'' The notice did not limit the ability of the syndicate manager to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] MSRB Notice 2009–42 (July 14, 2009)—Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities.

[4] The 1987 interpretive notice was filed with the SEC on December 22, 1987 for immediate effectiveness. *See* File No. SR–MSRB–1987–14.

allocate away from the priority provisions of the syndicate if to do so would be in the best interests of the syndicate. The Board determined to update the guidance provided in the 1987 interpretive notice due to changes in the marketplace and subsequent amendments to Rule G–11. The proposed interpretive notice will supersede the 1987 interpretive notice, which will be deleted as part of the proposed rule change.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[5] which provides that the MSRB's rules 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.

The MSRB believes that the proposed rule changes and proposed interpretive notice are consistent with the Act because they will prevent fraudulent and manipulative acts and practices and protect investors and the public interest.

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

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

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

On August 11, 2009, the MSRB published for comment the proposed amendments and proposed interpretive notice that comprise the proposed rule change.[6] The MSRB received comments from five commentators.[7]

First Southwest Letter

First Southwest supported the proposed amendments to Rule G–11, in particular: (1) The change that would require all dealers to disclose whether their orders are for their own accounts or related accounts and (2) the changes that would require that underwriters give priority to customer orders. It characterized the practice of filling dealer orders or related account orders before customer orders as ''front running'' and supported the changes to Rule G–11 to strengthen the prohibition against front running.

First Southwest assumed that one of the Board's goals in publishing Notice 2009–47 was to address flipping and said that the Board should go further by addressing flipping by non-syndicate members, hedge funds, investment advisors, mutual funds, bank portfolios, tender option bond (TOB) programs, and institutional investors. They suggested that the Board undertake a thorough study of flipping and, if appropriate, make recommendations for the regulation of this practice. They suggested that the following questions be addressed: (1) Do purchasers of bonds from a primary offering have the right to sell their bonds at any time? (2) Do purchasers of bonds from a primary offering have a right to take an immediate profit when possible? (3) Do flippers provide liquidity to the municipal marketplace? (4) Is flipping a case of demand being greater than supply thereby creating price discovery?

MWAA Letter

MWAA was supportive of the proposals regarding retail order periods in the proposed interpretive notice. They said that they enforce their retail order periods and, in particular, check for flipping. They said that they prefer that retail firms participate in the selling group, rather than buying during the institutional sales order period and marking up the bonds for their retail clients. Their letter did not address the proposed rule amendments.

Siebert Letter

Siebert commented on the proposed interpretive notice, stating that the retail order period process had broken down because few issuers were enforcing it. They said that some syndicate members submit large orders that they describe as bundled retail orders and that some institutional investors characterize their orders as retail, when in fact they probably are not. They said that some underwriting firms (primary book-runners) have formed arrangements with other firms to ''funnel'' bonds at the full, or split, takedown out of the syndicate, characterizing these orders as retail, rather than more appropriately as selling group orders. They said they were in full support of the concerns expressed by institutional investors and of enforcement of the underwriting rules governing fair dealing.

RBDA Letter

RBDA assumed that the proposed interpretive notice and proposed amendments to Rule G–11 were directed at flipping and said that much flipping is done by institutional investors, which the proposed interpretive notice would not address. They said that a dealer that submits retail orders during a retail order period without *bona fide* orders from retail customers already violates Rule G–17, which it said may be enforced through strict enforcement of existing rules and interpretations. They said that it is not always possible for a dealer to know whether an order is truly retail, for example if it comes from a bank trust department or a third party asset manager.

RBDA said that the proposed definition of ''affiliate'' and ''related account'' were too broad and would capture investor accounts that might be sufficiently independent to warrant treatment similar to unaffiliated customers. They suggested that the Board consider an alternative definition based on Rule G–14, such that if a trade would be required to be reported to RTRS without a special trade indicator, the investor would not be considered an affiliate or related account.

They also said that the proposed amendments would establish new recordkeeping rules for secondary market trading accounts.

SIFMA Letter

SIFMA opposed the proposed amendments to Rule G–11, arguing that they would disrupt the process of allocating securities. They objected to a rule that is focused only on underwriters, their affiliates, and related accounts, which they said would not eliminate front running and the ''placing of phantom [retail] orders.'' They said that the proposed amendments would add nothing that is not already prohibited under Rule G–17, which applies to all dealers, whether they are syndicate members or not. They said that dealers maintain records of orders, allotments, trade reporting data, and trade confirmations, which are used

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[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *See* MSRB Notice 2009–47 (August 11, 2009).

[7] Letters from: Carl Giles, Managing Director, First Southwest Company (''First Southwest''), to Peg Henry, MSRB, dated September 10, 2009; Letter from Lynn Hampton, Vice President for Finance and Chief Financial Officer, Metropolitan Washington Airports Authority (''MWAA''), to Ronald A. Stack, MSRB Chair, dated August 18, 2009; Letter from Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers Association (''RBDA''), to Ms. Henry, dated September 11, 2009; Letter from Leon J. Bijou, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Ms. Henry, dated September 11, 2009; and Letter from Napoleon Brandford, III, Chairman, Siebert Brandford Shank & Co., L.L.C. (''Siebert''), to Ms. Henry, dated September 8, 2009.

by FINRA to audit violations of Rule G–17. They ''urge[d] FINRA to vigorously enforce existing laws and regulations to prevent front running, placing phantom orders and all other deceptive, dishonest or unfair practices.''

SIFMA said that the proposed amendments to Rule G–11 would have detrimental effects on the process of allocating securities. They said that the amendments would reduce competition and result in higher borrowing costs. They said that the proposed amendments would interfere with the discretion afforded to syndicate managers by current Rule G–11.

SIFMA also said that the proposed amendments would not be consistent with FINRA's proposed rule on fixed price offerings, which they said would permit sales to affiliates as long as the sale was not at a discount.

SIFMA supported the proposed interpretive notice, which they characterized as providing more flexibility than the proposed rule changes.

Response to Comment Letters

Most of the commentators assumed that the purpose of the proposed rule change was the prevention of flipping.[8] Some of the commentators [9] then objected to the proposed amendments and, in RBDA's case, the proposed interpretive notice, on the grounds that they would not successfully eliminate flipping. Some of the commentators [10] also stated that the filling of dealer orders in advance of customer orders constituted front-running and was already prohibited under SEC rules. The Board's objective in proposing the rule change is the broader distribution of municipal securities, rather than the elimination of flipping. Rule G–11 was designed to address the concerns expressed by Congress that the ''economic power accruing to banks by virtue of their role as major consumers as well as underwriters of new issue municipals has led to a loose set of syndicate rules which permit banks to be underwriter distributors of new issues of municipal bonds and in the same issue give their own investment portfolio the prerogatives and priorities of public institutional orders.'' [11] Although Congress specifically focused on bank-related portfolios, the MSRB saw no reason to distinguish for purposes of Rule G–11 between such portfolios, on the one hand, and affiliated investment trusts or related portfolios of securities firms, on the other.[12] The Board determined that it was appropriate to address potential abuses in the allocation of securities to customers at this time and that the Board would consider the other issues raised by the commentators as noted above in the context of its broader ongoing review of its fair practice and other rules.

Only two of the comment letters expressly addressed the proposed amendments to Rule G–8 and Rule G–9. SIFMA suggested that existing recordkeeping rules were adequate to permit enforcement of Rule G–17 if vigorously enforced by FINRA. However, existing Rule G–9 does not require retention of records of unfilled orders, which limits the ability of FINRA to effectively surveil for compliance with these requirements. The Board determined that the proposed amendments to G–8 and G–9 are necessary to permit proper enforcement of the proposed rule change. Although RBDA commented that the proposed rule change would impose new recordkeeping requirements on secondary market trading accounts, the proposed rule change would merely move the existing recordkeeping requirements for such accounts to a new subsection of Rule G–8.

The Board determined that the RBDA proposal to define ''affiliate'' based on Rule G–14 trade reporting concepts was not advisable, because it would result in a weakening of existing guidance in that a dealer's proprietary account would be considered ''related,'' while a dealer's TOB account would not.

The Board did not agree with the SIFMA comment letter that the proposed interpretive notice is more flexible than the proposed amendments to Rule G–11, noting that the language in the proposed interpretive notice supposedly providing more flexibility—''to the extent feasible and consistent with the orderly distribution of securities in a primary offering''—is also contained in the proposed amendments to Rule G–11. The Board also did not agree that the proposed amendments to Rule G–11 would have detrimental effects on the process of allocating securities or that the amendments would reduce competition and result in higher borrowing costs. The Board also did not agree that the proposed amendments would interfere with the discretion afforded to syndicate managers by current Rule G–11, noting that neither the proposed amendments to Rule G–11 nor the proposed interpretive notice would preclude the allocation of securities to underwriters for their own accounts or their related accounts, because exceptions are provided if the issuer consents or the syndicate manager concludes that it is in the best interests of the syndicate to do so and properly documents that decision. Finally, with regard to SIFMA's comment on the proposed FINRA fixed price offering rule, there is no comparable fixed price offering rule for municipal securities.

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.

The MSRB requested that the proposed rule change become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) occurs more than 60 days after approval of the proposed rule change by the SEC.

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–2009–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2009–17. This file number should be included on the

[8] *See* letters from First Southwest, MWAA, RBDA, and SIFMA.

[9] *See* letters from RBDA and SIFMA.

[10] *See* letters from First Southwest and SIFMA.

[11] S. Rep. No. 94–75, at 49 (1975).

[12] *See* Notice of Filing of Proposed Rule G–11 on Syndicate Practices—MSRB Rule G–11, [1977–1987 Transfer Binder] MSRB Manual (CCH) at 10,363.

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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–2009–17 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61103; File No. SR–NSX–2009–07]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule To Increase Transaction Rebates to $.0024 per Share and Implement a 50% Market Data Rebate for Displayed Order Delivery Orders of Certain ETP Holders, and To Adopt a New Rule 16.4 That Would Use ''Liquidity Adding ADV'' To Determine the Volume Eligibility for all Rebate Tiers in Order Delivery

December 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2009, National Stock Exchange, Inc. 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 the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

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

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing a rule change, operative at commencement of trading on December 1, 2009, which proposes to amend the NSX Fee and Rebate Schedule (the ''Fee Schedule'') and adopt a new Rule 16.4. In summary, the rule change results in the use of the measurement ''Liquidity Adding ADV'' to determine volume eligibility for all Order Delivery mode of order interaction (''Order Delivery'')[3] rebate tiers, as well as an increase in transaction rebates to $.0024 per share and implementation of a 50% market data rebate for displayed Order Delivery orders of ETP Holders that achieve at least 5 million in Liquidity Adding ADV.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule and establish a new Exchange Rule 16.4 that would result in the use of ''Liquidity Adding ADV'', a measurement currently in use elsewhere in the Fee Schedule, to determine volume eligibility for all rebate tiers in Order Delivery. In addition, for ETP Holders that achieve at least five million in Liquidity Adding ADV, the proposed modifications would increase rebates for displayed orders of securities priced at or above one dollar in Order Delivery to $.0024 per share and provide a 50% market data rebate for displayed Order Delivery orders.

Liquidity Adding Rebate in Order Delivery:

Currently, for liquidity adding displayed order executions of securities trading at one dollar or higher in Order Delivery, the Fee Schedule provides a progressively higher rebate (of $0.0008, $0.0010 or $0.0012 per share) determined by the number of such shares an ETP Holder has executed on average per day (at least one million and less than ten million, at least ten million and less than 20 million, and at least 20 million, respectively) (the number of such shares being referred to in the Fee Schedule as ''Liquidity Adding ADV (O/D Displayed)''). Similarly, for liquidity adding Zero Display Order[4] executions of securities trading at one dollar or higher in Order Delivery, eligibility for rebates for such orders is based on the average daily number of such shares an ETP Holder has executed (''Liquidity Adding ADV (O/D Dark)'').

[4] ''Zero Display Orders'' as used herein and in the Fee Schedule means ''Zero Display Reserve Orders'' as specified in NSX Rule 11.11(c)(2)(A).