SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47969; File No. SR–MSRB–2003–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board To Require Dealers To Establish Anti-Money Laundering Compliance Programs

June 3, 2003.

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 May 22, 2003, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change (File No. SR–MSRB–2003–04) (the ''proposed rule change'') described in Items I, II, and III below, which Items have been prepared by the Board. 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 filed a proposed rule change, Rule G–41, on anti-money laundering compliance. As further discussed below, section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA PATRIOT Act'')[3] required financial institutions, including broker/dealers, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act (''BSA''),[4] and the regulations promulgated thereunder, by April 24, 2002. The MSRB has proposed new Rule G–41 to ensure that all brokers, dealers and municipal securities dealers (''dealers'')[5] that effect transactions in municipal securities, and in particular those that only effect transactions in municipal securities (''sole municipal dealers''), are aware of, and in compliance with, anti-money laundering program requirements. Thus, proposed Rule G–41 requires that all dealers establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator governing the establishment and maintenance of anti-money laundering programs. The adoption of MSRB Rule G–41 will provide clarity to dealers and examiners concerning the rules and regulations that dealers who effect transactions in municipal securities must comply with concerning the development of anti-money laundering compliance programs, it will not impose any new or different obligations upon such dealers. Below is the full text of the proposed rule change.

Rule G–41: Anti-Money Laundering Compliance Program

No broker, dealer or municipal securities dealer shall be qualified for purposes of Rule G–2 unless such broker, dealer or municipal securities dealer has met the anti-money laundering compliance program rules set forth by either the registered securities association of which the dealer is a member (e.g., NASD Rule 3011), or the rules set forth by the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer (e.g., 12 CFR 21.21 (OCC); 12 CFR 208.63 (FRB); 12 CFR 326.8 (FDIC); and 12 CFR 563.177 (OTS)), to the same extent as if such rules were applicable to such broker, dealer or municipal securities dealer.

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 Board 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 Board has prepared summaries, set forth in section 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 purpose of the proposed rule change is to ensure that all dealers establish minimum standards for the anti-money laundering compliance programs that dealers are required to develop and implement under section 352 of the USA PATRIOT Act. The USA PATRIOT Act, which was signed into law by President Bush on October 26, 2001, is designed to deter and punish terrorists in the United States and abroad and to enhance law enforcement investigating tools by prescribing, among other things, new surveillance procedures, new immigration laws, and new and more stringent anti-money laundering laws.

Title III of the USA PATRIOT Act, referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''AML Act''), imposes certain obligations on dealers through new anti-money laundering provisions and amendments to the BSA. Section 352 of the AML Act requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer with responsibility for a firm's anti-money laundering program; (iii) an ongoing employee training program; and (iv) an independent audit function to test the effectiveness of the anti-money laundering compliance program. Section 352 of the AML Act also required dealers to develop and implement a written anti-money laundering compliance program by April 24, 2002.[6]

Pursuant to pre-existing bank regulations, bank municipal securities dealers already were required to have anti-money laundering programs in place.[7] Because the bank regulations contain the same elements that are required by section 352, BSA regulation 31 CFR 103.120(b) provides that a financial institution that is subject to regulation by a Federal functional regulator[8] (including bank municipal

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

[2] 17 CFR 240.19b–4.

[3] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107–56, 115 Stat. 272 (2001).

[4] 31 U.S.C. 5311, *et seq.*

[5] The term ''dealer'' is used herein as shorthand for ''broker,'' ''dealer'' or ''municipal securities dealer,'' as those terms are defined in the Act. The use of the term does not imply that the entity is necessarily taking a principal position in a municipal security.

[6] *See* 31 U.S.C. § 5318(h) (amended by section 352 of the AML Act).

[7] *See* 12 CFR 21.21; 12 CFR 208.63; 12 CFR 326.8; and 12 CFR 563.177.

[8] These are defined in reference to section 509 of the Gramm-Leach-Biley Act (Public Law 106–102) to include the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (''OCC''), the Board of Directors of the Federal Deposit Insurance Corporation

securities dealers) will be deemed in compliance with the requirements of section 352 if it complies with the regulations of its regulator governing the establishment and maintenance of anti-money laundering programs.[9] The adoption of MSRB Rule G–41, on anti-money laundering compliance programs, will not impose any new or different obligations upon bank dealers; it will articulate that a bank municipal securities dealer has to comply with the regulations of its banking regulator in connection with anti-money laundering compliance programs in order to be qualified under MSRB Rule G–2, on standards of professional qualification. Examination of these financial institutions by their Federal functional regulators will continue to ensure compliance with those regulations.

For securities dealers that were not previously subject to AML compliance programs, the Department of Treasury and the Financial Crimes Enforcement Network (''FinCEN'') believed that it was appropriate to implement section 352 through industry self-regulatory organizations (''SROs'').[10] After passage of the USA PATRIOT Act, the SEC met with representatives from the NASD and the New York Stock Exchange(''NYSE'') to coordinate the filing of a rule proposal to prescribe the minimum standards required for each securities firm's anti-money laundering compliance program. The rules that were ultimately enacted became effective by April 24, 2002, the statutory deadline.[11] BSA regulation 31 CFR 103.120(c) provides that a financial institution regulated by an SRO shall be deemed to satisfy the requirements of section 352 if the financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its SRO governing such programs.[12]

NASD Rule 3011, which incorporates the requirements of section 352, is designed to allow dealers to be in compliance with section 352 by virtue of being in compliance with the rules of the dealers' SRO, the NASD. NASD also has provided significant guidance to assist its member firms in developing anti-money laundering compliance programs that fit their business model and needs.[13] However, in the case of municipal securities dealers who are members of both the NASD and MSRB, the rules that govern the dealers' conduct in connection with municipal securities activities are the rules of the MSRB, not the NASD. Therefore, for securities dealers that only conduct municipal securities transactions with the public, there currently is no SRO rule that provides guidance concerning the development and implementation of an anti-money laundering compliance program.[14] For this reason, the MSRB adopted MSRB Rule G–41, on anti-money laundering compliance programs, to ensure that all dealers, including sole municipal securities dealers, know where to look for guidance concerning the development and implementation of anti-money laundering compliance programs.

The provisions of the USA PATRIOT Act are provisions of federal law and consequently all MSRB members should already be in compliance with section 352 of the AML Act. The MSRB is proposing new Rule G–41 to ensure that all brokers, dealers and municipal securities dealers who effect transactions in municipal securities, especially sole municipal securities dealers, are aware of their obligations under section 352 and know where to look for guidance concerning appropriate anti-money laundering programs. Moreover, the adoption of MSRB Rule G–41 will facilitate compliance with and enforcement of anti-money laundering compliance program rules by identifying for both bank and NASD examiners the rules and regulations that each dealer must comply with. By adopting a new rule that requires all dealers that effect transactions in municipal securities to establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator, the MSRB provides clarity to dealers and examiners about dealers' anti-money laundering program obligations and avoids promulgating duplicative or inconsistent anti-money laundering program regulation.

(2) Basis

The Board proposed the rule change pursuant to section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * 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 Board believes that the proposed rule change is consistent with the Act in that it will facilitate dealer compliance with anti-money laundering compliance program regulation. These programs are designed to help identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

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

The Board does not believe that 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 brokers, dealers and municipal securities dealers.

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

Written comments were neither solicited nor received.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

(''FDIC''), the Office of Thrift Supervision (''OTS''), the National Credit Union Administration (''NCUA''), and SEC, and, pursuant to section 321(c) of the Act, the Commodity Futures Trading Commission (''CFTC'').

[9] *See* 31 CFR 103.120(b).

[10] *See* FinCen; Anti-Money Laundering Programs for Financial Institutions (Interim Final Rules announcement) 31 CFR part 103 (April 23, 2002), 67 FR 21110 (April 29, 2002).

[11] *See* Release No. 34–45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (SR–NASD–2002–24 and SR–NYSE–2002–10) (approval order); Release No. 34–46258 (July 25, 2002), 67 FR 49714 (July 31, 2002) (SR–Amex–2002–52) (approval order).

[12] *See* 31 CFR 103.120(c).

[13] *See http://www.nasdr.com/money.asp* (NASD Regulation Web Page provides information about anti-money laundering rules, regulations, and compliance).

[14] The MSRB believes that, nonetheless, sole municipal securities dealers are currently complying with NASD Rule 3011.

Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2003–04 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47964; File No. SR–NASD–2003–89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

June 2, 2003.

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 May 29, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), 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 and II below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to extend through December 1, 2003, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Interpretation''). Without such an extension these standards would terminate on May 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

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 its proposal and discussed any comments it received regarding the proposal. 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

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on May 31, 2003. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until December 1, 2003. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3 (b)(6).