

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2002-23 and should be submitted by December 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46819; File No. SR-MSRB-2002-10]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Rule G-14, on Reports of Sales or Purchases

November 12, 2002.

On September 24, 2002, 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> the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-10). The proposed rule change relates to MSRB Rule G-14, on reports on sales or purchases, by lowering the trade per day threshold for frequently traded municipal securities.

The Commission published the proposed rule change for comment in the **Federal Register**, October 18, 2002.<sup>3</sup> The Commission did not receive any comment letters relating to the forgoing proposed rule change.

### I. Description of the Proposed Rule Change

The MSRB filed with the Commission the proposed rule change relating to Rule G-14, on reports of sales or purchases, to increase transparency in the municipal securities market. The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report, which has been provided to subscribers each day since January 2000. The report is made available each morning by 7 am and includes details of transactions in municipal securities which were "frequently traded" the previous business day. From the beginning of the Transaction Reporting Program in 1994 through the spring of 2002, "frequently traded" securities were defined as those that were traded four or more times on a given business day. In May 2002, the Board defined "frequently traded" securities as those that were traded three or more times on a given day.<sup>4</sup>

When transparency was initially being introduced into the municipal securities market, the Board was concerned that an observer unfamiliar with the market might mistake an isolated reported transaction or pair of transactions as providing a reliable indicator of "market price." Because of this concern, the Board adopted the "frequently traded" threshold of four trades. At the same time, the Board has made a commitment to review the use of these reports as experience is obtained and eventually to move to transparency reporting on a more contemporaneous and comprehensive basis.<sup>5</sup>

Since 1994, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a report, published the day after trading

<sup>4</sup> See Release No. 34-45861 (May 1, 2002) 67 FR 30989-30990.

<sup>5</sup> See, e.g., "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Securities and Exchange Commission noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." See Release No. 34-34955 (November 9, 1994) 59 FR 59810.

("T+1"), that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began, as well, to publish individual transaction data on frequently traded securities. The Board has also introduced "comprehensive" transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than one week after trade date.<sup>6</sup>

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that information about a municipal security is to be disseminated in the T+1 Daily Transaction Report. The proposed rule change would lower the threshold from three to two trades per day.

### Impact of Proposed Report on Transparency

The proposed threshold would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. On a typical day, there are approximately 26,000 transactions in about 10,000 issues, with a total par value traded of about \$9.5 billion. The present Daily Transaction Report, with a threshold of three or more trades per day, includes an average of 14,400 trades in 2,600 different issues, with a total par value of about \$5.2 billion. Under the proposed threshold, the report is expected to include an average of 19,760 trades in 5,600 issues, with a total par value of about \$7.7 billion. This represents a 37 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 48 percent increase in par value reported.<sup>7</sup>

### Description of Service

The enhanced Daily Transaction Report with the two-trade threshold will replace the current report and will be made available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions will continue should the proposed Service be implemented. New subscriptions will be available free to parties who sign a subscription agreement. In addition,

<sup>6</sup> The first comprehensive report was introduced in October 2000 and listed all trades after a one-month delay. The latest comprehensive report began operation in August 2002 and has a one-week delay. See Release No. 34-46380 (August 19, 2002) 67 FR 54831-54832.

<sup>7</sup> Data is based upon market activity from April 1, 2001 through July 31, 2001.

<sup>9</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.

<sup>3</sup> See Release No. 34-46636 (October 10, 2002) 67 FR 64435.

recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

#### Implementation Schedule

The enhanced report will be available to subscribers as soon as practical after Commission approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

#### II. Summary of Comments

The Commission did not receive any comment letters addressing the Board's proposed rule change, but the Board had earlier received a comment letter from The Bond Market Association ("TBMA").<sup>8</sup> TBMA sent the comment letter in reference to the August 2002 change to the comprehensive daily report, in which TBMA also commented on the Board's announced plan to lower the threshold to two trades.<sup>9</sup> In its letter, TBMA expressed its continued support for the Board's steps to expand transparency in the municipal securities market. TBMA also stated its belief that T+1 dissemination of information on bonds that have traded at least twice a day "would provide useful information to investors and other market participants and is not likely to have a deleterious impact on the market for such bonds or mislead investors."<sup>10</sup> TBMA did state a reservation regarding the method of counting trades toward the reporting threshold. TBMA believes that when a dealer "matches or crosses purchase and sale transactions," this constitutes a single trade because this is the economic reality of such transactions, regardless of whether dealers report two transactions to the MSRB.<sup>11</sup>

Consistent with the Board's previous decisions,<sup>12</sup> the transaction reporting

<sup>8</sup> See letter from Frank Chin, Chair, Municipal Executive Committee, The Bond Market Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated August 8, 2002.

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

<sup>10</sup> *Id.*, at 2.

<sup>11</sup> *Id.*

<sup>12</sup> In 1994, a commentator made a similar suggestion with reference to the Board's filing that initiated the transaction reporting program. The commentator, a brokers' broker, suggested that the Board should count as one transaction the situation in which a brokers' broker purchases securities from a dealer and sells them to another dealer. The Board noted in its reply that these are "riskless principal" transactions and that other dealers may also do riskless principal transactions. The Board noted that its transaction reporting system would treat the sale to the intermediate dealer (e.g., the brokers' broker) and the intermediate dealer's subsequent sale as two transactions, and that it would treat these trades like any other trades.

system will continue to treat two transactions that constitute "matched" or "crossed" transactions like other trades. In the general case, only the dealer that effects a purchase and subsequent sale could identify the two trades as crossed agency trades or matched riskless principal transactions. The transaction reporting system does not require dealers to match the two sides of agency trades nor specifically to match or identify riskless principal transactions. Therefore, it is not possible to count those trades differently in the current system for purposes of the T+1 reporting threshold.

#### III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.<sup>13</sup> The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in 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>14</sup>

The MSRB 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 in that it applies equally to all dealers in municipal securities.

After careful review, the Commission finds that the MSRB's proposed rule change relating to Rule G-14, on reports of sales or purchases, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, as set forth above.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,<sup>15</sup>

<sup>13</sup> Additionally, 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>14</sup> 15 U.S.C. 78o-4(b)(2)(C).

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

that the proposed rule change (File No. SR-MSRB-2002-10) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-29311 Filed 11-18-02; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46806; File No. SR-NASD-2002-115]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities To Allocate Credits To Liquidity Providers

November 8, 2002.

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 August 19, 2002, 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. 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 amend NASD Rule 7010 to modify Nasdaq's transaction credit pilot program for exchange-listed securities. Nasdaq will implement the proposed rule change as soon as practicable following Commission approval. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.<sup>3</sup>

7010. System Services

<sup>16</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.

<sup>3</sup> The text is marked to show changes from the language of the rule as proposed to be amended by SR-NASD-2002-111, and assumes that the Commission will approve SR-NASD-2002-111 before approving SR-NASD-2002-115. If the Commission determines that SR-NASD-2002-111 should not be approved, Nasdaq will submit an amendment to SR-NASD-2002-115 to reflect the disposition of SR-NASD-2002-111.