

believes that the change is “unacceptable” and that smaller investors deserve “full reporting and trade information.”⁷

III. Discussion and Commission Findings

Section 19(b) of the Exchange Act⁸ requires the Commission to approve the proposed rule change filed by the MSRB if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. The Commission has reviewed carefully the proposed rule change, and the comments received, and finds that the modification to the transaction threshold on the T+1 Daily Report, as described in the proposed rule change, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that govern the MSRB.⁹ 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.¹⁰

The Commission supports the ongoing efforts of the MSRB to increase transparency in the municipal securities market and notes the careful and deliberate manner in which it has proceeded to do so over the last nine years.¹¹ This approach has provided an opportunity for the market to adjust incrementally. It has also permitted the Board, the Commission and market participants to observe whether any

market disruption has been caused by the release of an increasing amount of trading data. No significant disruption has been observed. The Commission expects that market participants will adjust to the release of information regarding all daily trades in a similar manner.

The Commission believes that the proposal will provide the benefit of price transparency to the municipal securities market while addressing the TBMA’s concerns regarding potentially negative effects from disclosure of the size of specific institutional trades. The release of such transaction data facilitates the flow of information for use by market professionals and pricing services.¹² In addition, increased transparency leads to greater market efficiency and increased accuracy in pricing municipal securities being traded in the secondary market. The Commission believes that the proposal is an appropriate preparatory step towards the 2004 implementation of real time disclosure in both the municipal and corporate bond markets.¹³

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,¹⁴ that the proposed rule change (File No. SR-MSRB-2003-02) be and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47881; File No. SR-NYSE-2003-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto and Order Granting Accelerated Approval of Amended Proposal by the New York Stock Exchange, Inc. To Conform the New York Stock Exchange Listed Company Manual to New York Stock Exchange Rules That Allow Authorized State-Registered Investment Advisers To Receive and Vote Proxy Materials on Behalf of Beneficial Owners

May 16, 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 April 25, 2003, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in items I, II, III below, which items have been prepared by the Exchange. On May 7, 2003, the NYSE submitted Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission has also decided to accelerate approval of the proposed rule change, as described in more detail below.

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

The NYSE proposes to amend sections 402.06 (“Exchange Proxy Rules for Member Organizations (General)”) and 402.10 (“Charges by Member Organizations for Distributing Material”) of its Listed Company Manual to conform such sections to NYSE rules that allow authorized state-registered investment advisers to receive and vote proxy materials on behalf of beneficial owners. The text of the proposed amendment is below. Proposed new language is italicized; deleted language is in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240-19b-4.

³ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated May 6, 2003 (“Amendment No. 1”). Amendment No. 1 replaces the original filing in its entirety. Telephone conversation between AnnMarie Tierney, Senior Counsel, Office of the General Counsel, NYSE, and Jennifer Lewis, Attorney, Division, Commission, on May 13, 2003.

⁷ *Id.*

⁸ 15 U.S.C. 78s(b).

⁹ 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).

¹⁰ 1015 U.S.C. 78o-4(b)(2)(C).

¹¹ The MSRB began to collect information from reports of inter-dealer trades in 1994 and began issuing a summary report of such trades in January of 1995. In March of 1998, reporting of customer trades began, followed by the release of a summary report of combined inter-dealer and customer trades in August 1998. In January 2000, the Board began releasing a report on T+1 of all bonds that traded four or more times daily. In May 2002, the MSRB lowered the threshold from four to three trades on the T+1 Daily Report. In November 2002, the MSRB lowered the trade threshold to two trades per day. See Release No. 34-34955 (November 9, 1994), 59 FR 59810; Release No. 34-45861 (May 1, 2002), 67 FR 30989; Release No. 34-46819 (November 12, 2002), 67 FR 69779.

¹² The T+1 Daily Report has been well received by market professionals and investors seeking information on market price levels and trading activity for municipal securities and has garnered greater and greater use over time.

¹³ The Commission believes that the MSRB’s real time trade reporting initiative should be accorded the highest priority and implemented as soon as possible, but not later than the current mid-2004 deadline.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

Listed Company Manual

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402.00 Proxies

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402.06 Exchange Proxy Rules for Member Organizations (General)

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The term "state" as used in this section shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

(A) Rule 450—Restriction on Giving of Proxies

No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of rule 452 (Para. 2452), unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing,

(1) Any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) Any person registered as an investment adviser, *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

(A) Rule 451—Transmission of Proxy Material

(a) Whenever a person soliciting proxies shall furnish a member organization:

(1) Copies of all soliciting material which such person is sending to registered holders, and

(2) Satisfactory assurance that [he] *the person* will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation, such member organization shall transmit to each beneficial owner of

stock which is in its possession or control or to an investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner, the material furnished; and

* * * * *

(D) Rule 452—Giving Proxies by Member Organization

A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting member organization holding as executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative of fiduciary capacity with authority to vote.

Voting procedure without instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 451, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not

include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

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402.10 Charges by Member Organizations for Distributing Material

The Exchange is engaged in a pilot program covering proxy fees. The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to rule 451 and in mailing interim reports or other material pursuant to rule 465. In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting the proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. Rule 465 states: that, "A member organization, when so requested by a company, and upon being furnished with:

(1) copies of interim reports of earnings or other material being sent to stockholders, and

(2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state*, who exercises investment discretion pursuant to an advisory contract for such beneficial owner."

The term "state" as used in this section shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

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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 III 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 October 16, 2002, the NYSE filed with the Commission amendments to NYSE rule 450 ("Restrictions on Giving of Proxies"), rule 451 ("Transmission of Proxy Material"), rule 452 ("Giving Proxies by Member Organizations") and rule 465 ("Transmission of Interim Reports and Other Material") to allow authorized state-registered investment advisers to receive and vote proxy materials on behalf of beneficial owners.⁴ These amendments were approved by the Commission on March 6, 2003.⁵ In light of the fact that Listed Company Manual sections 402.06 and 402.10 restate portions of NYSE rules 450, 451, 452 and 465, the Exchange is proposing to amend the Listed Company Manual to conform to the NYSE rule amendments approved by the Commission. In addition, the NYSE has proposed minor amendments to conform the restatement of NYSE rule 452 in section 402.06 to the text of current NYSE rule 452.

2. Statutory Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)⁶ that an exchange have rules that are 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 and, in general, to protect investors and the public interest.

⁴ See Securities Exchange Act Release No. 47215 (January 17, 2003), 68 FR 4263 (January 28, 2003) (SR-NYSE 2002-50).

⁵ See Securities Exchange Act Release No. 47458 (March 6, 2003), 68 FR 12131 (March 13, 2003) (SR-NYSE-2002-50) ("Approval Order").

⁶ 15 U.S.C. 78f(b)(5).

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

The Exchange 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 Exchange Act.

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.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2003-12 and should be submitted by June 17, 2003.

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

The Commission finds that the amended proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.⁷ The Commission believes the NYSE Listed Company Manual should conform to the NYSE rules; differences between the two could lead to confusion and misunderstanding. The Commission also believes that the changes to the NYSE Listed Company Manual are consistent with the Act for the reasons discussed in the prior Approval Order.⁸

⁷ 15 U.S.C. 78f(b)(5).

⁸ See the Approval Order, *supra* note 5, discussing changes made to the NYSE rules. The

Therefore, the Commission finds that the amended proposal will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.⁹

The NYSE has requested that the amended proposal be given accelerated approval pursuant to section 19(b)(2) of the Act.¹⁰ The Commission finds that good cause exists to grant accelerated approval to the proposal. The Commission notes that the proposed rule change is identical to amendments to the NYSE rules that were previously approved by the Commission after publication of notice thereof in the **Federal Register**.¹¹ Further, the Commission received one comment letter supporting the proposal in response to the publication.¹² Based on this, and the fact that the contents of the current proposal were subject to full notice and comment in the prior publication, the Commission finds there is good cause to accelerate approval of the proposal. Accordingly, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,¹³ to approve the amended proposal prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the amended proposal (SR-NYSE-2003-12) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

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Commission hereby incorporates by reference the discussion contained therein.

⁹ 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 efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ See *supra* notes 4 and 5.

¹² See letter from Christine A. Bruenn, NASSA President and Maine Securities Administrator, North American Securities Administrators Association, Inc., to Jonathan G. Katz, Secretary, Commission, dated February 18, 2003.

¹³ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b)(2).

¹⁴ *Id.*

¹⁵ 17 CFR 200.30-3(a)(12).