

immediately. The Commission believes that waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest as the proposed rule change presents no novel issues. For this reason, the Commission designates the proposed rule change as operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-01 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2008-01. This file number should be included on the 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 the filing also will be available for inspection and copying at the principal office of CBOE. 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 SR-CBOE-2008-01 and should be submitted on or before February 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57131; File No. SR-MSRB-2007-08]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to Rule G-8, Books and Records, Rule G-9, Preservation of Records, and Rule G-34, CUSIP Numbers and New Issue Requirements, To Improve Transaction Reporting of New Issues

January 11, 2008.

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 November 27, 2007, the Municipal Securities Rulemaking Board ("MSRB") 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 substantially 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 is filing with the Commission a proposed rule change consisting of an amendment of its Rule G-8, Books and Records, Rule G-9,

Preservation of Records, and Rule G-34, CUSIP Numbers and New Issue Requirements. The proposed rule change is designed to improve transaction reporting of new issues and would accelerate the timing for CUSIP number assignment and, with the exception of new issues of short-term instruments with less than nine months in effective maturity, require underwriters to:

(i) Submit certain information about a new issue of municipal securities to Depository Trust and Clearing Corporation's New Issue Information Dissemination System within set timeframes; and (ii) set and disseminate a "Time of First Execution" that allows time for market participants to access necessary information in preparation for trade reporting prior to beginning trade executions in the issue. The MSRB proposes an effective date for the proposed rule change of June 30, 2008. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), 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 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 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

MSRB Rule G-14, on transaction reporting, requires all brokers, dealers and municipal securities dealers ("dealers") to report all transactions in municipal securities to the MSRB Real-Time Transaction Reporting System ("RTRS") within fifteen minutes of the time of trade execution, with limited exceptions. One exception listed in Rule G-14 RTRS Procedures, paragraph (a)(ii) is a "three-hour exception" that allows a dealer three hours to report a transaction in a when, as and if issued ("when-issued") security if all of the following conditions apply: (i) The CUSIP number and indicative data of the issue traded are not in the securities

<sup>14</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</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.

master file used by the dealer to process trades for confirmations, clearance and settlement; (ii) the dealer has not traded the issue in the previous year; and (iii) the dealer is not a syndicate manager or syndicate member for the issue.<sup>3</sup>

The three-hour exception was designed to give a dealer time to add a security to its "securities master file" so that a trade can be reported through the dealer's automated trade processing systems. A securities master file contains the information about a municipal security issue that is necessary for a dealer to be able to process transactions in the issue. It includes such items as the interest rate, dated date, interest payment cycle, and put and call schedules. The dealer's securities master file often contains information only for securities held in custody for customers and for securities that have been recently traded. If a dealer trades a security that is not in its securities master file, the relevant securities information must be obtained by the dealer from an information vendor before the trade can be processed and reported.<sup>4</sup>

For new issue transactions, a dealer's access to necessary securities information depends not only on its link with an information vendor but also on whether that vendor itself has the information on the new issue. Vendors currently obtain much of their new issue information through voluntary cooperation from underwriters. This process does not always result in all the vendors having the necessary securities information by the time trade executions begin. Dealers trading a new issue for the first time need the three-hour exception from the fifteen-minute trade reporting requirement for their first trades in a new issue because the securities information is not always available at the time the trade is executed.<sup>5</sup>

<sup>3</sup> Another exception is an end-of-day deadline for reporting trades in short-term instruments under nine months in effective maturity, including variable rate instruments, auction rate products, and commercial paper.

<sup>4</sup> Many dealers use service bureaus for various trade processing functions, including the maintenance of securities master files. Securities master file update procedures for service bureaus are the same as those described for dealers.

<sup>5</sup> In the new issue market, information vendors seek to collect information on each issue and deliver it to customers in time for trade reporting in the new issue. There are several challenges for vendors and dealers to meet the reporting deadlines. For example, there are approximately 15,000 new municipal issues that must be set up in databases each month. Another problem for the industry is the fact that approximately 85 different information fields for each issue must be successfully gathered, which in large part depends on the timely cooperation of the underwriters.

To address inefficiencies in the collection of new information securities data, Securities Industry and Financial Markets Association ("SIFMA"), industry members, securities information vendors, and other service providers in the municipal securities market have worked extensively with The Depository Trust and Clearing Corporation ("DTCC") to develop a centralized system for collecting and communicating new issue securities information. The system, called the "New Issue Information Dissemination System" ("NIIDS"), will be operated by DTCC and will act as a central collection point for standardized electronic files of new issue information provided by underwriters which will be disseminated in real-time to information vendors.

Although the amount of securities information needed for trade reporting under Rule G-14 is limited,<sup>6</sup> many of the automated trade processing systems used to report trades currently need more extensive securities information (essentially the information necessary to produce a trade confirmation) before a trade can be reported. The industry initiative on NIIDS has resulted in a relatively comprehensive list of new issue securities data that will be collected and disseminated by NIIDS, including Time of Formal Award and Time of First Execution, discussed below. DTCC plans to implement NIIDS in early 2008.<sup>7</sup>

The proposed rule change is designed to improve new issue transaction reporting through requiring underwriter participation with NIIDS. The proposed rule change prescribes timetables for submission of data to NIIDS and other underwriter procedures that are intended to ensure that all dealers have timely access to the new issue information that is needed for compliance with trade reporting requirements. The MSRB proposes a June 30, 2008 effective date for the proposed rule change.<sup>8</sup>

<sup>6</sup> RTRS only requires dealers to include limited information on trade reports in when-issued securities, such as the CUSIP number of the security traded, the par value of the transaction, and the transaction price expressed as either yield or dollar price.

<sup>7</sup> In addition to providing an improved mechanism for disseminating the new issue information necessary for trade processing, the system also would use the information for purposes of establishing depository eligibility for new issues. DTCC plans to require use of the New Underwriting System ("NUWS"), of which NIIDS is a component, beginning in April 2008.

<sup>8</sup> NIIDS, in conjunction with MSRB rules, should make it possible for dealers to report new issue trades earlier and thus eliminate the need for the three-hour exception for when-issued trade reports. Accordingly, the MSRB has filed with the SEC a

Amendments to Rule G-34

Currently, Rule G-34 requires underwriters<sup>9</sup> to apply for CUSIP numbers within specific deadlines and to transmit a limited amount of information about a new issue such as the coupons, maturities and issue closing date to DTCC. The rule also contains a requirement for Time of Formal Award to be disseminated to market participants that may trade the new issue. The proposed rule change would accelerate the timing for CUSIP number assignment and, with the exception of new issues of short-term instruments with less than nine months in effective maturity, require underwriters to: (i) Submit certain information about a new issue of municipal securities to DTCC's NIIDS System within set timeframes; and (ii) set and disseminate a "Time of First Execution" that allows time for market participants to access necessary information in preparation for trade reporting prior to beginning trade executions in the issue.

#### Timing of CUSIP Number Assignment

CUSIP numbers are a required data element for automated trade processing and trade reporting systems and will be a prerequisite for entry of new issue information into NIIDS. Timely processing of new issue transactions requires that CUSIP numbers be assigned as early as possible in the underwriting process. Rule G-34 contains various requirements for underwriters, and for dealers acting as financial advisors on competitive sales, to apply to the CUSIP Service Bureau for CUSIP number assignment. The current deadlines are based on: The time the bond purchase agreement is executed (for underwriters in negotiated sales); the time of the issuer's award (for dealers acting as financial advisors in competitive sales); and the time of the first execution of a trade in the issue (for underwriters in competitive sales). The proposed rule change would set new deadlines designed to ensure CUSIP number assignment occurs as soon as possible in the underwriting process, allowing for the timely submission of new issue information to NIIDS.

proposed rule change to sunset the "three-hour exception" on June 30, 2008, to coincide with the effective date of the proposed rule change. See Securities Exchange Act Release No. 57002 (December 20, 2007), 72 FR 73939 (December 28, 2007) (SR-MSRB-2007-07).

<sup>9</sup> Rule G-34 defines "underwriter" very broadly to include a dealer acting as a placement agent as well as any dealer purchasing new issue securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the "underwriter" for purposes of Rule G-34.

For negotiated issues, the proposed rule change would require that an application must be made no later than the time that the pricing information for the issue is determined. For a dealer acting as a financial advisor on a competitive deal, the proposed rule change would require an application for CUSIP number assignment to be made within one business day of dissemination of a notice of sale. The proposed rule change also states a general requirement that the underwriter on a negotiated underwriting and a dealer acting as a financial advisor on a competitive deal would be required to ensure that final CUSIP number assignment occurs prior to the formal award of the new issue.<sup>10</sup>

Rule G-34 currently requires the underwriter in a competitive sale to apply for CUSIP numbers if an application has not already been made by the issuer or the issuer's representative. The MSRB understands that CUSIP numbers for competitively sold issues generally are assigned by the date of sale, but that on occasion this is not done.<sup>11</sup> Dealers have noted that, in these situations, automated trade processing and real-time trade reporting for the issue may be delayed because of the time necessary for the underwriter to obtain CUSIP numbers after the formal award. The proposed rule change would clarify the underwriter's existing responsibility in such situations to apply for CUSIP numbers immediately after receiving the award.

#### Underwriter Requirement To Provide Information to NIIDS Within Certain Deadlines

The proposed rule change would require underwriters to transmit new issue information to NIIDS within deadlines that are intended to ensure that the information reaches information vendors and is further re-disseminated for use in automated trade processing systems by the time that trade executions begin in a new issue. The specific items of information required to

be submitted are those generally considered necessary for automated trade processing in an issue and are designated in the NIIDS system as items necessary for "Trade Eligibility."

Underwriters would be required to submit this information electronically in accordance with the methods and formats stated for NIIDS system users. The information could be provided through computer-to-computer links or through a web interface allowing manual input of data. Although the underwriter would be ultimately responsible for timely, comprehensive and accurate data submission, the proposed rule change would allow for use of an intermediary to accomplish this function.<sup>12</sup>

NIIDS is designed so that, once CUSIP numbers are assigned to a new issue, information about the issue can be submitted as it becomes available. The proposed rule change would require underwriters to provide information specified by NIIDS as required for Trade Eligibility as soon as it is available, with a final deadline for all such information to be provided no later than two hours after the Time of Formal Award, which would be redefined as discussed below. The proposed rule change also states that only the hours between 9 a.m. and 5 p.m. Eastern on an RTRS Business Day are counted for purposes of the timetables listed in the draft amendments. For example, if the Time of Formal Award occurs at 6 p.m. Eastern, the timetables listed in the proposed rule change would not commence until 9 a.m. Eastern on the next RTRS Business Day.

#### Revised Definition of "Time of Formal Award"

The Time of Formal Award represents the earliest time that a dealer can execute transactions in a new issue and is used currently in Rule G-34 and in the proposed rule change to set certain deadlines. The proposed rule change includes a minor change to the current definition of "Time of Formal Award" for purposes of Rule G-34 timetables. The MSRB understands that underwriters are not always present at the time the issuer executes a bond purchase agreement or formally confirms an award of a competitive issue. Some time may elapse between this time and the time at which the underwriter becomes aware of the issuer's action and this delay may not be under the control of the underwriter. To

address this issue, the proposed rule change states that for purposes of Rule G-34, "Time of Formal Award" is defined as:

- For competitive issues, the later of the time the issuer formally awards the issue or the time the issuer notifies the underwriter of the award; and,
- For negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution of the agreement.

The Time of Formal Award is one of the required information items to be submitted to NIIDS. Therefore, it would be subject to the general requirement to be submitted as soon as it is available as well as the ultimate deadline for submission of all required data, which is two hours after the Time of Formal Award. These requirements should ensure that all information necessary for trade reporting is available through NIIDS no later than two hours after the Time of Formal Award.

#### "Time of First Execution" and Advance Notification Requirement

The second major component of the amendments to Rule G-34 is an advance notification requirement that would ensure that all dealers have advance notification of the underwriter's planned time for first trade executions and can be prepared to process trade executions by that time. The MSRB understands that under current industry practices, underwriters do not always disseminate the time that they intend to begin trade executions. Consequently, dealers that are not in the underwriting group sometimes do not know when their own transactions in the issue should begin and this may negatively affect the ability of those dealers to report their initial transactions in a timely and accurate manner or to coordinate their reported time of trade execution on inter-dealer transactions with members of the underwriting group.

To address this concern, the proposed rule change would require the underwriter of a new issue to disseminate the "Time of First Execution," which is the underwriter's anticipated time for beginning trade executions in a new issue. Once an underwriter has completed the submission of all required information to NIIDS, the information then will need to be re-disseminated to other dealers that may have trades in the issue and these dealers (and service bureaus) will need to "set up" automated trade processing systems with the new issue information. To allow time for this

<sup>10</sup> Under existing provisions of Rule G-34, dealers frequently apply for CUSIP numbers before interest rates are determined. In these cases, the dealer must provide the final interest rate information as soon as it becomes available. The proposed rule change would clarify that a dealer must update any of the required information that changes after an initial application as soon as the new information becomes available.

<sup>11</sup> As noted above, in competitive sales where a dealer serves as financial advisor, Rule G-34 requires the dealer to apply for CUSIP numbers. However, in competitive sales where there is no dealer financial advisor, there is no other dealer associated with the issue prior to the date of sale that can be charged under MSRB rules with the responsibility to make a pre-sale application for CUSIP numbers.

<sup>12</sup> Several industry vendors that provide "bookrunning" services to underwriters on new issues have indicated that they plan to offer a service to transmit information about a new issue to NIIDS on behalf of the underwriter.

process to occur, the underwriter would be required to provide a Time of First Execution that is at least two hours after the time that all required information is provided to NIIDS.

The proposed rule change would accommodate several situations that may occur in the underwriting of new issues of municipal securities. For example, the underwriter would be allowed to submit an anticipated Time of Formal Award rather than wait for the actual Time of Formal Award if the underwriter and issuer have agreed in advance on a Time of Formal Award. This may be the case if the formal award is a scheduled pro forma requirement by an issuer's governing body and all details necessary for the formal award have been finalized and submitted to NIIDS in advance. The underwriter could in this case complete its submission to NIIDS using the anticipated Time of Formal Award. By doing this, the underwriter could schedule its Time of First Execution to occur immediately after the formal award, rather than waiting two hours. Any changes to these times would require correction in NIIDS as soon as known. As long as the two-hour notification period has been met once, however, it would not be necessary to start a new notification period as a result of minor adjustments to the Time of Formal Award or Time of First Execution.

#### Amendments to Rules G-8 and G-9

The proposed rule change includes amendments to the MSRB's recordkeeping rules that would require an underwriter to retain for three years a record of the Time of Formal Award, a copy of the notification from DTCC indicating that a new issue received Trade Eligibility status in NIIDS and the Time of First Execution. This would provide a record showing whether the underwriter provided information necessary for Trade Eligibility no later than two hours after the Time of Formal Award and whether the underwriter provided at least two hours advance notification of the Time of First Execution.

#### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,<sup>13</sup> 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 change is consistent with the Act because it will allow the municipal securities industry to produce more accurate trade reporting and transparency.

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

The MSRB 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 Act because it would apply equally to all brokers, dealers and municipal securities dealers.

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

On March 5, 2007, the MSRB published for comment an exposure draft of the proposed rule change<sup>14</sup> (the "March 2007 draft amendments").<sup>15</sup> While the MSRB did not request comment on the amendments to Rule G-8 and G-9, these amendments were included in the proposed rule change to provide enforcement agencies with information necessary to gauge compliance with the amendments to Rule G-34.

The MSRB received comments on the March 2007 draft amendments from the following commentators:

- Bear Stearns and Co., Inc.
- Standard and Poor's CUSIP Service Bureau ("CUSIP").
- First Southwest Company ("First Southwest").
- J.J.B. Hilliard, W.L. Lyons, Inc. ("Hilliard Lyons").
- Joe Jolly and Co., Inc.
- Lehman Brothers ("Lehman").
- Roosevelt and Cross, Inc. ("Roosevelt and Cross").
- Securities Industry and Financial Markets Association ("SIFMA").
- Wiley Bros.

While many of the commentators made specific suggestions on details of the March 2007 draft amendments,

commentators were generally supportive. SIFMA "supports \* \* \* efforts by the MSRB to improve the efficiency of new issue information to the market necessary for dealers to comply with price reporting requirements." Hilliard Lyons stated "the centralization of an electronic system for new issue trade processing is a change that the industry has been eager for implementation \* \* \* [and the MSRB's] proposal would alleviate the duplication of information that is sent to numerous vendors and would cut down on the time needed to process new issues." Roosevelt and Cross agreed "with the philosophy of a central issue facility, which would make more information available on a timely basis and would increase transparency in the municipal marketplace."

#### Timing of CUSIP Number Assignment

CUSIP numbers are a required data element for automated trade processing and reporting systems and are a prerequisite for entry of new issue information into NIIDS. Rule G-34 currently requires that CUSIP numbers be assigned prior to the Time of Formal Award for underwriters of negotiated issues and for dealer financial advisors on competitive issues. The March 2007 draft amendments included new deadlines designed to ensure that CUSIP number assignment occurs as soon as possible in the underwriting so that information submission to NIIDS could occur as early as possible. The March 2007 draft amendments stated the following requirements:

- Managing underwriter of negotiated issue—apply for CUSIP number assignment within one business day of dissemination of a Preliminary Official Statement (POS); for issues sold without a POS, apply no later than the time pricing information is finalized.
- Dealer financial advisor on competitive issue—apply for CUSIP number assignment within one business day of dissemination of a POS; for issues sold without a POS, apply within one business day of a notice of sale.
- Managing underwriter of competitive issue with no pre-assigned CUSIP numbers—apply immediately after receiving notification of award and ensure that CUSIP numbers are assigned prior to transmitting Time of First Execution to NIIDS.

While CUSIP stated that it "has always encouraged industry participants to apply for CUSIP numbers as early as possible" and supports the proposed changes to Rule G-34 that would advance the timing of CUSIP number assignment, several commentators opposed a requirement to apply for

<sup>14</sup> See MSRB Notice 2007-10 (March 5, 2007).

<sup>15</sup> The March 2007 draft amendments also included amendments to Rule G-14 that would create a new Conditional Trading Commitment (CTC) special condition indicator. The CTC indicator is not included in the proposed rule change as it is still under consideration by the MSRB.

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

CUSIP numbers earlier in an underwriting. SIFMA and First Southwest recommended that the existing requirements for CUSIP number assignment remain unchanged because information about a new issue is not always final at the time of the dissemination of a POS. SIFMA stated that “the maturity schedule in a POS is tentative and very likely to change requiring underwriters to revise the application” and noted that “while CUSIP numbers can be revised, the revisions result in numbers being out of sequence, and out of sequence numbers raise questions by investors and traders, as well as complicating operations.” SIFMA noted that underwriters that want to set an early Time of First Execution would be required to apply for CUSIP numbers earlier than is currently required under Rule G-34; however, while this may occur in some instances, the MSRB believes that many underwriters will continue to postpone making an application for CUSIP number assignment until shortly before the Time of Formal Award.

If a POS is not disseminated on a new issue, the March 2007 draft amendments included an alternative deadline for making a CUSIP number application. For a negotiated issue, the March 2007 draft amendments proposed requiring an underwriter to apply for CUSIP numbers at the time that pricing information is determined. For a dealer financial advisor on a competitive issue, the March 2007 draft amendments proposed requiring the dealer financial advisor to apply for CUSIP numbers within one business day of a notice of sale. The MSRB decided to use these alternative deadlines in the proposed rule change as they occur later in an underwriting than the time that a POS would typically be disseminated, but in advance of the Time of Formal Award, and should have the desired effect of advancing the timing of CUSIP number assignment.

#### Definition of “Time of Formal Award”

The March 2007 draft amendments revised the definition of “Time of Formal Award” to take into consideration that time may elapse between the time of the issuer’s action and the time the underwriter becomes aware of the issuer’s action. Although commentators were supportive of the revised definition of Time of Formal Award, SIFMA clarified that for a competitive transaction they “interpret time of formal award not to occur before there is a set quantity and price,” a definition with which the MSRB agrees.

#### New Issue Information Necessary for Trade Reporting

To ensure that all information necessary for transaction reporting is made available to market participants as quickly as possible, the March 2007 draft amendments would require underwriters to transmit to NIIDS all new issue information designated in the NIIDS system as necessary for “Trade Eligibility” no later than two hours of the Time of Formal Award and include the Time of Formal Award (or the planned Time of Formal Award) as part of the information transmitted to NIIDS. The MSRB requested comment on whether the two-hour period after the Time of Formal Award for completing the information submission to NIIDS would be sufficient and whether the time period should be different for negotiated and competitive underwritings.

Commentators were supportive of the two-hour timeframe for completing the communication to NIIDS of new issue information designated as necessary for “Trade Eligibility” for negotiated issues. However, Lehman proposed a longer period of three hours for competitive issues, citing inefficient communication with issuers who do not retain professional financial services. Wiley Bros. suggested revisiting the issue after the system has been implemented for a six-month period to determine whether the two hour period should be shortened or lengthened. The MSRB notes that it will review the deadlines in the proposed rule change once NIIDS is implemented and dealers gain system experience.

#### Time of First Execution and Advance Notification Requirements

To ensure that dealers that are not part of the underwriting group for the new issue are apprised of the time that the underwriter will initiate trade executions in the new issue and to ensure that those dealers will be prepared to process and report their own transactions in a timely manner, the March 2007 draft amendments included a requirement for underwriters to disseminate the Time of First Execution through NIIDS and provide a Time of First Execution that is no earlier than two hours after all required new issue information has been provided to NIIDS.

The MSRB noted that, while electronically formatted information can be retransmitted immediately, it believes that the two-hour advance notification period prior to the Time of First Execution would be sufficient for vendors, dealers, and service bureaus to

receive and enter information disseminated from NIIDS into their own systems. While all comments received on the two-hour advance notification period prior to the Time of First Execution indicate support, First Southwest noted that this timeframe should “be reviewed as the industry gains experience with the NIIDS submission process.” Similarly, SIFMA commented that “it may be useful for the MSRB to have the flexibility to make adjustments in response to circumstances” that may arise after continued use of the NIIDS system. The MSRB notes that it will review the two hour advance notification period once NIIDS is implemented and dealers gain system experience.

#### Timely Trade Reporting and Underwriter Flexibility

For the various requirements for submitting information to NIIDS and setting a Time of First Execution, the March 2007 draft amendments state that only the hours between 9 a.m. and 5 p.m. Eastern Time on an RTRS Business Day are counted. A major implication of this is that an underwriter that does not obtain and transmit all required data elements to NIIDS by 3 p.m. Eastern Time would not be able to set a Time of First Execution on that day.

The MSRB noted that this may present difficulties for West Coast underwriters, and requested suggestions for alternative approaches to help address time zone issues. Lehman and Wiley Bros. agreed that the 9 a.m. to 5 p.m. hours are sufficient, adding only that “a provision should be included for ‘early closes.’”

#### Proposed Effective Dates of the Draft Amendments

The MSRB requested comment on how much lead time would be necessary for underwriters to implement the changes required to use the NIIDS system and for dealers to implement the CTC indicator. Most commentators noted that it is difficult to commit to a time frame until NIIDS has been implemented and experience with the system has been gained. Lehman noted that “as this a major change in the way of doing business, a long lead time would be warranted.” First Southwest and SIFMA both noted that at least six months should be allowed after NIIDS is implemented for dealers to program the changes required.

Roosevelt and Cross suggested a tiered approach for requiring the submission of NIIDS data requirements, citing potential “unfair processing burdens on managing underwriters.” Roosevelt and Cross proposed splitting the required

data elements into two components, requiring only data elements essential to completing the transaction to be inputted at the time of sale and the remaining elements within 24 hours. The MSRB notes that a SIFMA/DTCC task force identified the data elements about a new issue as necessary for automated trade processing of when-issued trades. This information is designated in NIIDS as information necessary for "Trade Eligibility." While the MSRB recognizes that the proposed rule change would represent a significant change for underwriters, one of the objectives is to ensure that all dealers have access to information necessary to process and report trades in new issues in real-time.

#### Short-Term Instruments with Less than Nine Months in Effective Maturity

The MSRB also requested comment on whether certain types of new issues of municipal securities have special characteristics or use different "bookrunning" services that would present difficulties for underwriters to comply with the draft amendments to Rule G-34. SIFMA stated that short-term instruments with less than nine months in effective maturity, such as variable rate instruments, auction rate products and commercial paper, "each have operational issues that present problems distinct from long-term fixed-rate securities" that would make complying with the NIIDS data dissemination requirement difficult. SIFMA noted that "intermediaries may not be available to process the fields for Trade Eligibility with the result that underwriters may themselves be required to populate the fields and have systems in place to enter the data in the two hour period allowed by the proposed rule."

The MSRB notes that trades in short-term instruments with less than nine months in effective maturity qualify for an end-of-day exception from real-time transaction reporting. Therefore, one of the primary purposes of the March 2007 draft amendments, to improve timely real-time transaction reporting of new issues, does not necessarily apply. While underwriters would be able to manually input information about a new issue to NIIDS through a web interface, the MSRB believes that the burden of complying with the requirement in the March 2007 draft amendments to transmit to NIIDS all new issue information designated as necessary for "Trade Eligibility" no later than two hours of the Time of Formal Award for short term instruments with less than nine months in effective maturity would not be warranted given the marginal

benefit to price transparency that would be achieved. The MSRB decided that the NIIDS data dissemination requirement for new issues that have an effective maturity of nine months or less should be phased in at a later time once intermediaries or dealer systems are able to submit information about such securities to NIIDS electronically.<sup>16</sup>

#### 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2007-08 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-MSRB-2007-08. This file number should be included on the 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

<sup>16</sup> The MSRB notes that Trade Eligibility information on short term instruments with less than nine months in effective maturity would still be required to be submitted to DTCC in connection with an underwriter's requirement to apply for depository eligibility under Rule G-34(a)(ii)(A), but would not be subject to the requirement to communicate such information not later than two hours after the Time of Formal Award.

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-2007-08 and should be submitted on or before February 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-732 Filed 1-16-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57132; File No. SR-NYSEArca-2007-125]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Continued Listing Standards for Equity Index-Linked Securities

January 11, 2008.

#### I. Introduction

On December 5, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), 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 proposal to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(i)(2)(a), which sets forth

<sup>17</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.