

For example, the FICC rules require that a member be placed on the watch list and prohibited from receiving the return of excess clearing fund collateral for failure to timely submit a required financial report or other information to FICC. FICC is proposing the deletion of all these provisions because the placement of a member on the watch list and the prohibiting of the return of a member's excess of clearing fund collateral should result from management's monitoring of the member and should not automatically occur because of rules violations.<sup>10</sup>

### 3. Consequences for Being on the Watch List

Currently, the GSD rules contain a very specific amount by which the clearing fund requirement of a netting member that is placed on the watch list may be increased.<sup>11</sup> The MBSD and NSCC rules contain provisions that are more general in this regard.<sup>12</sup> FICC believes the GSD rules are unnecessarily specific in this regard and should be amended to more closely reflect the MBSD and NSCC rules.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of section 17A(b)(3)(F),<sup>13</sup> which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of section 17A(b)(3)(H)<sup>14</sup> which, among other things, requires that the rules of a

clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which restructures and harmonizes FICC's fines with those of DTC and NSCC, is consistent with those statutory obligations.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.<sup>15</sup>

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2007-05), as amended, be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58154; File No. SR-MSRB-2008-03]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Rule G-11, on New Issue Syndicate Practices, and Rule G-12, on Uniform Practice

July 15, 2008.

On March 18, 2008, the Municipal Securities Rulemaking Board ("MSRB"), 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 proposed rule change consisting of amendments to Rule-11, on new issue syndicate practices, and Rule G-12, on uniform practice. The proposed rule change was published for comment in the **Federal**

**Register** on April 18, 2008.<sup>3</sup> The Commission received no comment letters about the proposed rule change. On June 26, 2008, the MSRB filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the proposed rule change as modified by Amendment No. 1.

The proposed rule change consists of amendments to Rule G-11 and Rule G-12 that (a) delete Rule G-12(i); (b) consolidate the remaining syndicate practice provisions of Rule G-12 into Rule G-11; (c) delete the syndicate-related sections of Rule G-12; and (d) make minor technical corrections to Rule G-11. A full description of the proposal is contained in the Commission's Notice.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>5</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act<sup>6</sup> and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the Act because it will facilitate transactions in municipal securities and protect investors and the public interest by creating a consolidated rule that seeks to avoid inadvertent rule violations and clarifies and modernizes its rules to bring them into line with the realities of current market practice without compromising investor protection.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the

<sup>3</sup> See Securities Exchange Act Release No. 57659 (April 14, 2008), 73 FR 21166 (April 18, 2008) ("Commission's Notice").

<sup>4</sup> Amendment No. 1 clarifies a broker, dealer or municipal securities dealer's existing obligations and does not add any new requirements. This is a technical amendment and is not subject to notice and comment.

<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> FICC currently has and would retain the right to deny the return of excess clearing fund collateral in instances where it is concerned about a particular member's financial or operational capability.

<sup>11</sup> The GSD rules currently state that GSD "may require a Netting Member that has been placed on the Watch List, to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with section 2 of Rule 4 (which additional deposit shall constitute a portion of the Netting Member's Required Fund Deposit) of up to 200 percent of its highest single Business Day's Required Fund Deposit during the most recent 20 Business Days, or such higher amount as the Board may deem necessary \* \* \*."

<sup>12</sup> For example, MBSD rules state that MBSD "may require a Participant that has been placed on the Watch List to make and maintain a deposit to the Participants Fund over and above the amount determined \* \* \*."

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>15</sup> 15 U.S.C. 78c(f).

<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.

proposed rule change (SR-MSRB-2008-03), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58125; File No. SR-NASDAQ-2008-031]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 4350 Related to the Direct Registration Program

July 9, 2008.

#### I. Introduction

On April 1, 2008, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on May 29, 2008.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

Pursuant to NASDAQ Rule 4350(l), Nasdaq requires that all listed securities be eligible to participate in a Direct Registration Program (generally referred to as the Direct Registration System or "DRS").<sup>3</sup> However, Rule 4350(a) allowed foreign private issuers to follow its home country practice in lieu of complying with certain provisions of Rule 4350, including those pertaining to DRS under Section (l) of the rule.

NASDAQ is amending its rules to modify the requirement for a foreign private issuer to be eligible to rely on an exception to the requirement to participate in DRS and to clarify the applicability of the DRS-eligibility requirement to book-entry-only

securities. NASDAQ will implement the proposed change related to book-entry-only securities immediately upon approval and the proposed change affecting foreign private issuers on March 31, 2009.

The text of the new rule change is below. New rule language is in italics; deletions are in brackets.<sup>4</sup>

#### *Rule 4350. Qualitative Listing Requirements for NASDAQ Issuers Except for Limited Partnerships*

##### (a) Applicability

(1) Foreign Private Issuers. A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: Comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). *In addition, a foreign private issuer must be eligible to participate in a Direct Registration Program, as required by Rule 4350(l), unless prohibited from complying by a law or regulation in its home country.* A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in either its annual reports filed with the Commission or on its Web site each requirement of Rule 4350 that it does not follow and shall describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on NASDAQ shall make the same disclosures in either its registration statement or on its Web site.

(2)-(5) No change.

(b)-(k) No change.

##### (l) Direct Registration Program

(1) All securities initially listing on NASDAQ on or after January 1, 2007, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. This provision does not extend to: (i) Additional classes of securities of companies which already have securities listed on NASDAQ; (ii) companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S.; or, (iii) [non-equity] securities which are book-entry-only.

(2)(A) *Except as indicated in paragraph (2)(B) below, on [On] and*

after March 31, 2008, all securities listed on NASDAQ (except [non-equity] securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act.

(B) *Until March 31, 2009, a foreign private issuer may follow its home country practice in lieu of the requirements of this Rule 4350(l), provided, however, that such an issuer must follow the requirements of Rule 4350(a) and IM-4350-6 for doing so. Thereafter, the listed securities of such issuers (except securities which are book-entry-only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act unless prohibited from complying by a law or regulation in its home country.*

(3) No change.

(m)-(n) No change.

##### IM 4350-6 Applicability

1. Foreign Private Issuer Exception and Disclosure. A foreign private issuer (as defined in Rule 3b-4 under the Exchange Act) listed on Nasdaq may follow the practice in such issuer's home country (as defined in General Instruction F of Form 20-F) in lieu of some of the provisions of Rule 4350, subject to several important exceptions. First, such an issuer shall comply with Rule 4350(b)(1)(B) (Disclosure of Going Concern Opinion), Rule 4350(j) (Listing Agreement) and Rule 4350(m) (Notification of Material Noncompliance). Second, such an issuer shall have an audit committee that satisfies Rule 4350(d)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 4350(d)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1), subject to the exemptions provided in Rule 10A-3(c) under the Exchange Act). *Fourth, a foreign private issuer must comply with Rule 4350(l) (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country.* Finally, a foreign private issuer that elects to follow home country practice in lieu of a requirement of Rule 4350 shall submit to Nasdaq a written statement from an independent counsel in such issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws *and, in the case of a company prohibited from complying with Rule 4350(l), certifying that a law or regulation in the home country prohibits such compliance.* In the case of new listings, this certification is required at the time of listing. For existing issuers, the certification is required at the time

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 57842 (May 20, 2008), 73 FR 30990 (May 29, 2008) [File No. SR-NASDAQ-2008-031].

<sup>3</sup> For more information on NASDAQ's DRS listing requirement and DRS generally, see Securities Exchange Act Release Nos. 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR-NASDAQ-2006-008] and 57062 (December 28, 2007), 73 FR 900 (January 4, 2008) [File No. SR-NASDAQ-2007-101].

<sup>4</sup> Changes are marked to the rule text that appears in the electronic manual of NASDAQ found at <http://nasdaq.complinet.com>.