

Special Purpose Issuer) to enter into an interest rate hedging program utilizing Derivative Transactions.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42492; File No. SR-MSRB-00-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting and Transaction Assessments, Pursuant to Rule A-13

March 2, 2000.

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 February 7, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed amendment to its rule A-13 on underwriting and transaction assessments for brokers, dealers and municipal securities dealers. Rule A-13 currently provides for fee assessments based on transaction activity, as measured by the par value of inter-dealer sales, and on underwriting activity. The proposed rule change would change the fee assessment based on transaction activity to include the par value of sales to customers. This would provide for necessary increases in revenue sufficient to offset declines in underwriting assessments and increases in Board expenses. In review of the present need to bring Board revenues into better balance with necessary expenditures, the Board is requesting Commission approval of the proposed rule change by April 1, 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to help provide sufficient revenues to fund Board operations and to allocate fees among broker, dealers and municipal securities dealers (collectively "dealers") in a manner that more accurately reflects each dealer's involvement in the municipal securities market. The proposed rule change would accomplish these purposes by revising the current fee based on transaction activity to include, as a basis for measuring involvement in the market, sales of municipal securities by dealers to customers. The proposed rule change would also exclude certain short-term securities from the new customer transaction-based fee assessment and from the existing fee assessment based on inter-dealer transactions.³

Current Fee Structure

Rule A-13 currently provides for an assessment based on the total par value of a dealer's inter-dealer sales transactions in municipal securities.⁴ Dealers report these transactions by submitting transaction information to the automated comparison system operated by National Securities Clearing Corporation ("NSCC"). The Rule A-13 inter-dealer transaction assessment has been set at \$.005 per \$1,000 par value of sales since it was instituted in 1996.

In addition to the assessment based on inter-dealer transaction activity, the Board currently levies three other types of fees that are generally applicable to

dealers. Rule A-12 provides for a \$100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A-14 provides for an annual fee of \$200 paid by each dealer that conducts municipal securities business during the year. In addition to the Rule A-13 inter-dealer transaction assessment, Rule A-13 also provides for an assessment on underwriting activity, based on the par value of the dealer's purchases from the issuer of primary offerings of municipal securities.⁵

Proposed Fee Structure

Under the proposed rule change, the transaction-based fee, which currently takes into consideration only the amount of a dealer's inter-dealer sales activity, would be expanded to take into account the dealer's sales transactions to customers as well. A rate of \$.005 per \$1,000 par value would be used to calculate assessments for both inter-dealer and customer transactions.

The proposed rule change would exclude from the calculation of both inter-dealer and customer transaction-based fees certain transactions in very short-term instruments: securities that have a final stated maturity of nine months or less and securities that may be put to the issuer at least as frequently as every nine months. These excluded categories of short-term issues are referred to hereafter as "municipal commercial paper," "short-term notes," and "variable rate demand obligations." These instruments are not currently excluded from the inter-dealer transaction-based fee, but would be excluded from that fee once the proposed rule change becomes effective.

Need for the Proposed Rule Change

Static or Declining Revenues

The proposed rule change is needed to help bring the Board's revenues more closely into balance with expenditures. During the past three fiscal years, the greatest part of the Board's revenues—

⁵ The Rule A-13 underwriting assessment fee historically has varied, based on new issue volume in the market and the Board's revenue needs. Since 1991, Rule A-13 has provided for an assessment of \$.03 per \$1,000 on primary offerings (as defined in Exchange Act Rule 15c2-12) of municipal securities that have an aggregate par value of at least \$1,000,000, that are not "puttable" to an issuer every two years or less, and that have a final stated maturity of two years or more. Since 1992, the Rule A-13 underwriting assessment has been \$.01 per \$1,000 for primary offerings with a final stated maturity of nine months or more, but less than two years, and \$.01 per \$1,000 for primary offerings which are "puttable" to an issuer every two years or less. Rule A-13 exempts from underwriting assessments those primary offerings which have a final stated maturity of nine months or less or which are puttable at least as frequently as every nine months until maturity.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities for which transaction fees are not assessed are those with a final stated maturity of nine months or less or which are "puttable" to an issuer at least as frequently as every nine months until maturity. The rationale for excluding these securities is discussed below.

⁴ The total par value of sales transactions will be referred to hereafter as "transaction activity."

69 percent—has come from the underwriting fee. Underwriting fee revenue, however, decreased by 16 percent in the last fiscal year ("FY")—from \$8,162,250 in FY 1998 to \$6,819,726 in FY 1999—as total underwriting in the industry declined.⁶ The Board projects a further ten percent decrease in underwriting fee revenue in FY 2000,⁷ and little or no increase in underwriting volume in the years after 2000. In addition, the Board's annual revenue from inter-dealer transaction activities has been virtually unchanged over the past three years. Thus, the two major current sources of Board revenue are either static or declining. If there is no alteration in the fee structure, overall revenues are projected to decline six percent between FY 1999 and 2000.

Increase in Expenses

During the past five years, due to increased regulatory activities and expanded operation of the Municipal Securities Information Library ("MSIL") system,⁸ the Board's expenses have increased from \$6,716,681 in FY 1994 to \$9,849,701 in FY 1999. Much of the Board's expenses during this time have derived from development and operation of its Transaction Reporting System, which supports market surveillance and price transparency functions for the municipal securities market.⁹

⁶ Underwriting of long-term municipal securities was \$286 billion in calendar year 1998 but declined in 1999 by more than 20 percent to \$226 billion. See "A Decade of Municipal Bond Finance," *The Bond Buyer*, January 7, 2000, at 30.

⁷ New issues of municipal securities in January 2000 were about seven billion dollars, a decline of 35% from the level of January 1999. Refunding volume decreased more than 90%. See "January's Deep Freeze: New-Issue Volume Lowest Since at Least '95," *The Bond Buyer*, February 1, 2000, at 1.

⁸ The MSIL is composed of computer systems that store and disseminate, to the public and municipal securities enforcement agencies, the following information: official statements, advance refunding documents, and continuing disclosure of material events; political contributions by municipal securities professionals; and municipal securities transactions.

⁹ MSIL expenditures during the past five fiscal years totaled \$16.5 million, more than half of which is for Transaction Reporting System development and operations. Since inception, the Transaction Reporting System has been enhanced to disseminate more information in the transparency reports and to increase the information provided in a surveillance database to support enforcement of Board rules. Annual subscriptions to the transparency reports are available for a fee of \$15,000, which has resulted in revenue that less than offsets the marginal cost of production. In January 2000, the Board began making available detailed transaction reports. The Board has determined that, in order to foster the broadest possible dissemination of price information, the new reports will be made available free of charge. See Exchange Act Release No. 41916 (Sept. 27, 1999) 64 FR 53759 (Oct. 4, 1999).

In 1999, the Board began to look into possible ways to provide a "real-time" transaction reporting system in the municipal securities market to make price and volume information public on a more contemporaneous basis than is currently the case. This will continue to require budgetary allocations consistent with, or higher than, that experienced thus far. In addition, the Board's long-range plans call for increased involvement in activities to improve disclosure, which may entail substantial modification or enhancement of the Board's computer systems.

Projected Shortfall and Request for Commission Approval

The proposed amendment, therefore, is necessary to address a projected shortfall in Board revenues caused by declining underwriting assessments and increases in projected expenses. The Board estimates that sales activity for long-term bonds in FY 2000 will be approximately \$350 billion in inter-dealer trades and \$480 billion in customer sales.¹⁰ Assuming the customer transaction fee is effective for six months in FY 2000, Board revenues from transaction activity-based fees during FY 2000 would be about three million dollars.

The proposed change in the fee structure would bring the Board's revenues into better balance with its expenditures. Fiscal year 2000 expenditures are projected to be \$11.98 million. Total revenues, including the transaction fees estimated above, are projected to be \$10.39 million. If the proposed rule change is effective for half the current fiscal year, the projected shortfall will be \$1.59 million. Without any assessment based upon customer trade activity, the projected shortfall would be an additional \$1.2 million, i.e., the total shortfall would be \$2.79 million. For this reason, the Board is requesting that the Commission approve the proposed rule change prior to April 1, 2000, for effectiveness on the same date. In the years after 2000, without the proposed fee, there would be an even larger shortfall, which would be of serious concern to the Board.

Proposed Fee Structure Better Reflects Dealer's Market Participation

The Board's goal in determining the underwriting and transaction assessments has been to make the fees paid by each dealer reflect the dealer's involvement in the municipal securities

market. When it originally adopted the rule A-13 underwriting fee in 1976, the Board stated its intention to broaden the scope of the rule, when possible, to reflect market activity occurring after the purchase of a new issue from an issuer. Reliable information to measure inter-dealer transaction activity first became available in 1995 as part of the Board's Transaction Reporting Program. This information, reported by dealers to the Board under Rule G-14, is the basis of the inter-dealer transaction fee that went into effect in 1996. In adopting the inter-dealer transaction fee, the Board noted that, together, the underwriting and inter-dealer transaction fees would more accurately reflect each dealer's participation in the market than the underwriting fee alone. At the same time, the Board stated its intention to examine customer transaction data when it became available, in order to adjust dealer fees even more equitably.¹¹

Dealers began reporting customer transactions to the Board under rule G-14 in March 1998. Combined sales data (i.e., inter-dealer plus customer sales) is a better measure of dealer participation in the market than is inter-dealer sales data alone, because there is substantial activity by dealers that buy securities on the inter-dealer market for resale to customers. The Board believes the combination of underwriting, inter-dealer and customer transaction fees to be the best currently available means for comprehensive measurement of dealer participation in the municipal securities market.¹²

Under the proposed rule change, the board would assess transaction fees on a monthly basis, based on transactions that dealers report to the Transaction Reporting System. Dealer sales to customers (not purchases by the dealer from customers) will be used as the measure of transaction activity. This avoids double counting when a dealer buys and sells a block of securities in the customer market.¹³

Exclusions

After reviewing trade data from the Transaction Reporting System, the Board determined to exclude certain

¹¹ See "Revisions to Board Fee Assessments: Rules A-13, A-14 and G-14," *MSRB Reports*, Vol. 16, No. 2 (June 1996), at 13-15.

¹² As an alternative to the proposed transaction-based fee structure, the Board considered a revenue-based approach to fees. The Board concluded that it may not be feasible to conduct the objective audits necessitated by revenue-based fee assessment and, therefore, that the transaction-based approach is preferable.

¹³ Similarly, the current inter-dealer transaction fee is assessed to the dealer on the "sell side" of each trade.

¹⁰ Additional FY 2000 inter-dealer activity in short-term notes and short puts (securities excluded from the proposed fee) is estimated by the Board as \$3.4 billion. Customer sales in the same securities are estimated to be \$720 billion.

very short-term municipal issues (*e.g.*, commercial paper, variable rate demand obligations and short-term notes) from both the inter-dealer and customer transaction assessments.¹⁴ There are relatively few transactions in these issues compared to the market as a whole (less than 7 percent of all transactions). However, transactions in these extremely short-term issues, which constitute about 51 percent of the par value traded, typically have very high par values. To assess a transaction activity fee on such issues would result in disproportionate fees for the small number of dealers that trade them, especially since those dealers also generally will have the highest levels of transaction and underwriting activity in issues that are subject to fee assessments.¹⁵

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act,¹⁶ which requires, in pertinent part, that the Board's rules shall:

provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board * * *.

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

The Board does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in that it applies equally to all dealers in municipal securities.

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.

¹⁴ Currently, all inter-dealer transactions required to be reported to the Board are considered for purposes of the fee calculation.

¹⁵ In connection with the Board's proposal in 1995 to institute the inter-dealer transaction fee assessment, several municipal "broker's brokers" expressed a concern that they would be assessed a disproportionate share of Board fee revenue. The presently proposed rule change would address this concern. Since broker's brokers do not effect transactions with customers, the percentage of total Board revenue paid by these brokers would decrease when customer transactions are included in the fee base.

¹⁶ 15 U.S.C. 78o-4(b)(2)(J).

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 MSRB 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 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-00-03 and should be submitted by March 31, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jonathan G. Katz,
Secretary.

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¹⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42494; File No. SR-NASD-00-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delay of the Implementation Date of Changes to Riskless Principal Trade Reporting Rules

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 February 24, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

Nasdaq's proposal is an re-interpretation to NASD Rules 4632, 4642, 4652, 6420, and 6620, regarding riskless principal trade reporting. The intent of this proposed re-interpretation is to delay the effective date of the riskless principal trade reporting rule changes announced in SR-NASD-98-59⁵ and SR-NASD-98-08,⁶ and the interpretations thereto filed in SR-NASD-99-39⁷ and SR-NASD-99-52.⁸

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ See Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

⁶ See Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 37226 (July 15, 1999).

⁷ See Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

⁸ See Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).