

qualifications for a limited period of time in order to give ETP Holders an opportunity to adjust to the inclusion of odd lot transactions in CADV. This proposed change is also designed to maintain competition on the Exchange by eliminating the potential for ETP Holders to immediately fail to qualify for a Tier due to the inclusion of odd lot transactions in the consolidated tape beginning on December 9, 2013. The Exchange believes that competition would not be burdened by including odd lot transactions in LMM Tier determinations because the Exchange anticipates that this would not have a significant impact on the number of securities for which each particular LMM Tier would otherwise apply absent the inclusion of odd lot transactions—*i.e.*, only one security to which an LMM is assigned based on October 2013 data.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The billing method described herein is based on objective standards that are applicable to all ETP Holders and reflects the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-133 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2013-133. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEArca-2013-133 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70990; File No. SR-MSRB-2013-08]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Amendments to MSRB Rule G-11, on Primary Offering Practices, Relating to Changes in a Bond Authorizing Document**

December 5, 2013.

#### **I. Introduction**

On September 19, 2013, 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 MSRB Rule G-11, Primary Offering Practices, relating to consents to changes in a bond authorizing document. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

The MSRB states in the Notice that municipal entity issuers ("issuers") or bond owners often request amendments to bond authorizing documents in order to modernize outdated provisions or address other concerns that have arisen after the initial issuance of bonds. These amendments are typically achieved by the consent of owners of a specified

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 70607 (October 3, 2013), 78 FR 62736 ("Notice").

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

percentage of the aggregate principal amount of bonds, as determined by the authorizing document. The MSRB asserts that the process of obtaining consents from bond owners and related costs can be significant because the identity of beneficial owners of bonds is frequently unknown to issuers and trustees.<sup>4</sup> To address some of these burdens, issuers frequently have requested underwriters, as temporary owners of bonds during the initial distribution period and representing the aggregate principal amount of bonds underwritten, to provide consents to amendments to authorizing documents. According to the MSRB, this allows issuers to avoid the potential cost and delay of obtaining, by direct solicitation, consents from beneficial owners. However, according to the MSRB, this approach may result in a dealer consenting to changes to authorizing documents that adversely affect the interests of existing bond owners.<sup>5</sup>

The MSRB proposes to amend MSRB Rule G-11, Primary Offering Practices, to prohibit brokers, dealers and municipal securities dealers (“dealers”) from providing consents to any amendment to authorizing documents for municipal securities, either as an underwriter, a remarketing agent, or as agent for or in lieu of bond owners, except in certain limited circumstances set forth in proposed section (I) of Rule G-11.<sup>6</sup>

Subparagraph (I)(i)(A) will except from the prohibition an underwriter that provides bond owner consents to changes in authorizing documents if such documents expressly allowed an underwriter to provide such consents

and the offering documents for the issuer’s existing securities expressly disclosed that consents could be provided by underwriters of other securities issued under the same authorizing documents.

Subparagraph (I)(i)(B) will except from the prohibition a dealer that owns the relevant securities other than in the capacity of an underwriter or a remarketing agent. The MSRB states that the determination of whether a dealer owns the securities for purposes of this exception will depend on whether it purchased such securities without a view to distribution.

Subparagraph (I)(i)(C) will except a dealer acting as a remarketing agent to whom the relevant securities had been tendered as a result of a mandatory tender, provided that all securities affected by the amendment (other than securities retained by an owner in lieu of a tender and for which such bond owner had delivered consent) had been tendered. If a bond owner elects to exercise its right to “hold” bonds subject to a mandatory tender in lieu of tendering, the remarketing agent will be prohibited from providing consents to any amendment to an authorizing document unless it also receives the specific written consent of such bond owner to such change.

Subparagraph (I)(i)(D) will except a dealer that provides consent to changes to authorizing documents solely as agent for and on behalf of bond owners that delivered separate written consents to such amendments. An underwriter providing an “omnibus” consent under this subparagraph will not be viewed as substituting its judgment for that of bond owners but rather as an agent facilitating the collection and delivery of consents.

Subparagraph (I)(i)(E) will except a dealer, in its capacity as an underwriter, that provides consent on behalf of prospective purchasers to amendments to authorizing documents if the amendments would not become effective until all existing bond owners affected by the proposed amendments (other than the prospective purchasers for whom the underwriter had provided consent) had also consented.<sup>7</sup>

<sup>7</sup> The MSRB states that this exception recognizes a limited circumstance in which an underwriter’s consent to amendments to authorizing documents, provided in lieu and on behalf of new purchasers of bonds, will be permitted. In this case, the underwriter’s consent will not become effective until existing owners of all bonds (other than the prospective purchasers for whom the underwriter had provided consent) affected by such amendment and outstanding at the time such consent became effective had also provided consent. The MSRB states that this alternative might be considered when an issuer was in the process of accumulating

Lastly, paragraph (I)(ii) will define certain terms for purposes of proposed section (I), specifically the terms “authorizing document,”<sup>8</sup> “bond owner,”<sup>9</sup> and “bond owner consent.”<sup>10</sup>

### III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>11</sup> In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, 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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.<sup>12</sup>

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, because it should protect investors by prohibiting consents to amendments to authorizing documents from a dealer who may be only the temporary owner of the bonds and thus may not share a bond owner’s prior or long-term economic interest in the bonds, except under limited circumstances set forth in the rule. The Commission notes that the

consents from all owners of outstanding bonds and had not completed acquiring the consents prior to issuing a new series of bonds. In that case, an underwriter’s consent on behalf of new purchasers would not become effective until all other bond owners affected by the amendment had also provided their consent and such other consents were currently effective. The MSRB represents that this exception would not affect an underwriter’s ability to provide consents as permitted in subparagraph (I)(i)(D) of the proposed rule change.

<sup>8</sup> The MSRB defines the term “authorizing document” to mean the trust indenture, resolution, ordinance, or other document under which the securities are issued.

<sup>9</sup> The MSRB defines the term “bond owner” as the owner of municipal securities issued under the applicable authorizing document.

<sup>10</sup> The MSRB defines the term “bond owner consent” to mean any consent specified in an authorizing document that may be or is required to be given by a bond owner pursuant to such authorizing document.

<sup>11</sup> In approving the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>4</sup> The MSRB states that many municipal securities are issued in book-entry form and registered as a single “global” certificate in the name of a depository. Thus, the identity of beneficial owners of the bonds is frequently unknown to issuers and trustees. Additionally, the MSRB states that identifying such owners and obtaining consents often results in cost and delay in achieving the requisite number of consents.

<sup>5</sup> The MSRB represents, that while existing bond owners may be considered as having agreed to provisions relating to amendments to the authorizing documents at the time of purchase, such bond owners are not likely to have anticipated that a dealer, acting as an underwriter or remarketing agent with no prior or future long-term economic interest in the bonds, could provide such consent unless such ability had been specifically authorized in the authorizing documents and disclosed to bond owners.

<sup>6</sup> The MSRB notes that consents from dealers solely in their capacity as an underwriter or a remarketing agent and required or permitted in connection with their administrative duties under authorizing documents are not subject to the proposed rule change. Further, the MSRB notes that the proposed rule change does not affect other methods used by issuers to obtain consents from owners of newly issued bonds, such as consents received from bond owners upon initial purchase of the bonds.

exceptions in the rule to allow dealer consent to changes in authorizing documents are limited in nature so as to protect existing bond holders, while addressing concerns of issuers about obtaining consents to amendments of their authorizing documents in certain situations. In addition, the Commission believes that the proposed rule change will enhance transparency regarding the practice of obtaining bond owner consents from dealers.

At the same time, the Commission notes that the MSRB has represented that the proposed rule change does not grant an affirmative right to dealers to provide consents to changes to authorizing documents and does not alter the dealer's obligations applicable under other MSRB rules, including its fair dealing obligations under Rule G-17. Accordingly, dealers may not simply rely on the exceptions prescribed in the rule but rather are obligated to consider and comply with their Rule G-17 obligations in seeking to provide consents to amendments in authorizing documents at the request of an issuer in accordance with the exceptions provided.

For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

#### IV. Conclusion

For the foregoing reasons, 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, and in particular, Section 15B(b)(2)(C) of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-MSRB-2013-08) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71000; File No. SR-NSCC-2013-802]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection To Advance Notice Filing, as Modified by Amendment Nos. 1, 2, and 3, To Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed To Increase Liquidity Resources To Meet Its Liquidity Needs

December 5, 2013.

#### I. Introduction

On March 21, 2013, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),<sup>1</sup> entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act" or "Title VIII") and Rule 19b-4(n) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>2</sup> advance notice SR-NSCC-2013-802 ("Advance Notice") to institute supplemental liquidity deposits to NSCC's Clearing Fund designed to increase liquidity resources to meet NSCC's liquidity needs ("SLD Proposal").<sup>3</sup>

On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Advance Notice.<sup>4</sup> On May 1, 2013,

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NSCC also filed the SLD Proposal contained in the Advance Notice as proposed rule change SR-NSCC-2013-02 ("Proposed Rule Change"). Release No. 34-69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013). On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Proposed Rule Change. Release No. 34-69620 (May 22, 2013), 78 FR 32292 (May 29, 2013). On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Proposed Rule Change, as previously modified by Amendment No. 1. Release No. 34-69951 (Jul. 9, 2013), 78 FR 42140 (Jul. 15, 2013). On October 7, 2013, NSCC filed Amendment No. 3 to the Proposed Rule Change, as previously modified by Amendment Nos. 1 and 2. Release No. 34-70688 (Oct. 15, 2013), 78 FR 62846 (Oct. 22, 2013). On December 5, 2013, the Commission issued an Order Approving the Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs. Release No. 34-70999.

<sup>4</sup> NSCC filed Amendment No. 1 to the Advance Notice and Proposed Rule Change filings to include as Exhibit 2 a comment letter from National Financial Services ("NFS"), a Fidelity Investments ("Fidelity") company, to NSCC, dated March 19, 2013, regarding the SLD Proposal prior to NSCC filing the SLD Proposal with the Commission ("NFS Letter"). See Release No. 34-69451 (Apr. 25, 2013), 78 FR 25496 (May 1, 2013) ("Notice") and see

the Commission published notice of the Advance Notice, as modified by Amendment No. 1, for comment in the **Federal Register**.<sup>5</sup> On May 24, 2013, the Commission published notice of its extension of its review period of the Advance Notice, as modified by Amendment No. 1.<sup>6</sup> The Commission received 12 comment letters, including the NFS Letter, to the SLD Proposal as initially filed and as modified by Amendment No. 1.<sup>7</sup>

On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Advance Notice, as previously modified by Amendment No. 1 ("Amended SLD Proposal"), which the Commission published for comment in the **Federal Register** on July 15, 2013.<sup>8</sup> The Commission received nine comment letters to Amendment No. 2.<sup>9</sup>

Exhibit 2 to File No. SR-NSCC-2013-802, <http://www.sec.gov/rules/sro/nsc/2013/34-69451-ex2.pdf>.

<sup>5</sup> See Notice, 78 FR 25496.

<sup>6</sup> Release No. 34-69605 (May 20, 2013), 78 FR 31616 (May 24, 2013) ("Notice of Amendment No. 1").

<sup>7</sup> See NFS Letter. See letters to Elizabeth M. Murphy, Secretary, Commission from: John C. Nagel, Esq., Managing Director and General Counsel, Citadel Securities ("Citadel"), dated April 18, 2013 ("Citadel Letter I") and June 13, 2013 ("Citadel Letter II"); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab & Co., Inc. ("Charles Schwab"), dated April 22, 2013 ("Charles Schwab Letter I") and May 1, 2013 ("Charles Schwab Letter II"); Thomas Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association ("SIFMA"), dated April 23, 2013 ("SIFMA Letter I"); Julian Rainero, Bracewell & Giuliani LLP, on behalf of Investment Technology Group Inc. ("ITG"), dated April 25, 2013 ("ITG Letter I"); Matthew S. Levine, Managing Director, Co-Chief Compliance Officer, Knight Capital Americas LLC ("Knight Capital"), dated April 25, 2013 ("Knight Capital Letter"); Giovanni Favretti, CFA, Managing Director, Deutsche Bank, dated April 25, 2013 ("Deutsche Bank Letter"); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated April 25, 2013 ("Fidelity Letter I"); and Chief Financial Officer & Executive Managing Director, ConvergeX Execution Solutions LLC ("ConvergeX"), dated May 2, 2013 ("ConvergeX Letter I") and May 22, 2013 ("ConvergeX Letter II").

<sup>8</sup> Release No. 34-69954 (Jul. 9, 2013), 78 FR 42127 (Jul. 15, 2013) ("Notice of Amendment No. 2").

<sup>9</sup> See letters to Elizabeth M. Murphy, Secretary, Commission from: Thomas Price, Managing Director, Operations, Technology & BCP, SIFMA, dated June 24, 2013 ("SIFMA Letter II") and August 7, 2013 ("SIFMA Letter III"); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated June 26, 2013 ("Fidelity Letter II"); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab, dated August 5, 2013 ("Charles Schwab Letter III") and September 11, 2013 ("Charles Schwab Letter IV"); Paul T. Clark and Anthony C.J. Nuland, Seward & Kissel, LLP (representing Charles Schwab), dated August 5, 2013 ("Charles Schwab Letter V"); John C. Nagel, Esq., Managing Director and General Counsel, Citadel, dated August 5, 2013 ("Citadel Letter III") and September 5, 2013 ("Citadel Letter IV"); and Mark Solomon, Managing Director and Deputy General Counsel, ITG, dated August 5, 2013 ("ITG Letter II").

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).