

definition of settlement day will enable EMCC to better coordinate its settlement activities with the recommendations of the appropriate trade associations.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice. EMTA has recommended that the emerging markets debt marketplace be closed in the U.S. on Good Friday, April 10, 1998, and has issued a settlement schedule recommending that transactions which would otherwise be scheduled to settle on April 10, 1998, settle on April 13, 1998. Accelerated approval will give EMCC adequate time to notify its members of the change in the settlement date.

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR-EMCC-98-2 and should be submitted by May 4, 1998.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change (File No. SR-EMCC-98-2) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39833; File No. SR-MSRB-98-06]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-15(d)(ii) Concerning Automated Confirmation/Acknowledgment of Customer Transactions

April 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 3, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the Board. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The Board is filing amendments to Board rule G-15(d)(ii), concerning automated confirmation/acknowledgment of customer transactions (hereafter referred to as "the proposed rule change"). The text of the proposed rule change is as follows:<sup>2</sup>

#### G-15 Confirmation, Clearance and Settlement of Transactions With Customers

(a)-(c) No change.  
(d) Delivery/Receipt vs. Payment Transactions.

(i) No change.  
(ii) *Requirement for Confirmation/Acknowledgment.*

(A) *Use of Registered Clearing Agency or Qualified Vendor.* Except as provided in this paragraph (ii) of rule G-15(d), no broker, dealer or municipal securities dealer shall effect a customer transaction for settlement on a delivery vs. payment or receipt vs. payment (DVP/RVP) basis unless the facilities of a [registered] Clearing Agency [registered with the Securities and Exchange

Commission (registered clearing agency)] or *Qualified Vendor* are used for automated confirmation and acknowledgment of the transaction. Each broker, dealer and municipal securities dealer executing a customer transaction on a DVP/RVP basis shall: (A) ensure that the customer has the capability, either directly or through its clearing agent, to acknowledge transactions in an automated confirmation/acknowledgment system operated by a [registered] Clearing Agency or *Qualified Vendor*; (B) submit or cause to be submitted to a [registered] Clearing Agency or *Qualified Vendor* all information and instructions required by the [registered] Clearing Agency or *Qualified Vendor* for the production of a confirmation that can be acknowledged by the customer or the customer's clearing agent; and (C) submit such transaction information to the automated confirmation/acknowledgment system on the date of execution of such transaction; provided that a transaction that is not eligible for automated confirmation and acknowledgment through the facilities of a [registered] Clearing Agency shall not be subject to this paragraph (ii).

(B) *Definitions for Rule G-15(d)(ii).*

(1) "*Clearing Agency*" shall mean a clearing agency as defined in Section 3(a)(23) of the Act that is registered with the Commission pursuant to Section 17A(b)(2) of the Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/acknowledgment services.

(2) "*Qualified Vendor*" shall mean a vendor of electronic confirmation and acknowledgment services that:

(A) for each transaction subject to this rule: (i) delivers a trade record to a Clearing Agency in the Clearing Agency's format; (ii) obtains a control number for the trade record from the Clearing Agency; (iii) cross-references the control number to the confirmation and subsequent acknowledgment of the trade; and (iv) electronically delivers any acknowledgment received on the trade to the Clearing Agency and includes the control number when delivering the acknowledgment of the trade to the Clearing Agency;

(B) annually certifies: (i) with respect to its electronic trade confirmation/acknowledgment system, that it has a capacity requirements evaluation and monitoring process that allows the vendor to formulate current and anticipated estimated capacity requirements; (ii) that its electronic trade confirmation/acknowledgment

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Italicizing indicates new language; [brackets] indicate deletions.

system has sufficient capacity to process the volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/acknowledgment service during the upcoming year; (iii) that its electronic trade confirmation/acknowledgment system has formal contingency procedures, that the entity has followed a formal process for reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed, tested, and updated on a regular basis; (iv) that its electronic confirmation/acknowledgment system has a process for preventing, detecting, and controlling any potential or actual systems or computer operations failures, including any failure to interface with a Clearing Agency as described in rule G-15(d)(ii)(B)(2)(A), above, and that its procedures designed to protect against security breaches are followed; and (v) that its current assets exceed its current liabilities by at least five hundred thousand dollars;

(C) when it begins providing such services, and annually thereafter, submits an Auditor's Report to the Commission staff and obtains from the Commission staff a statement that the Commission staff does not object to the Auditor's Report. (An Auditor's Report will be deemed unacceptable if it contains any findings of material weakness.);<sup>3</sup>

(D) notifies the Commission staff immediately in writing of any material change to its confirmation/acknowledgment systems. (For purposes of this subparagraph (D) "material change" means any changes to the vendor's systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/acknowledgment systems, including changes that: (i) affect or potentially affect the capacity or security of its electronic trade confirmation/acknowledgment system; (ii) rely on new or substantially different technology; (iii) provide a new service as part of the Qualified Vendor's electronic trade confirmation/acknowledgment system; or (iv) affect or have the potential to adversely affect the vendor's confirmation/acknowledgment system's interface with a Clearing Agency.);

(E) immediately notifies the Commission staff in writing if it intends to cease providing services;

(F) provides the Board with copies of any submissions to the Commission staff made pursuant to subparagraphs (C), (D), and (E) of this rule G-15(d)(ii)(B)(2) within ten business days.

(G) promptly supplies supplemental information regarding its confirmation/acknowledgment system when requested by the Commission staff or the Board.

(3) "Auditor's Report" shall mean a written report which is prepared by competent, independent, external audit personnel in accordance with the standards of the American Institute of Certified Public Accountants and the Information Systems Audit and Control Association and which: (A) verifies the certifications described in subparagraph (d) (ii) (B) (2) (B) of this rule G-15; (B) contains a risk analysis of all aspects of the entity's information technology systems including, computer operations, telecommunications, data security, systems development, capacity planning and testing, and contingency planning and testing; and (C) contains the written response of the entity's management to the information provided pursuant to (A) and (B) of this subparagraph (d) (ii) (B) (3) of rule G-15.

(C) Disqualification of Vendor. A broker, dealer or municipal securities dealer using a Qualified Vendor that ceases to be qualified under the definition in rule G-15(d)(ii)(B)(2) shall not be deemed in violation of this rule G-15(d)(ii) if it ceases using such vendor promptly upon receiving notice that the vendor is no longer qualified.

(iii) No change.

(e) No change.

## 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 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

(a) The clearance of institutional customer transactions is accomplished today in large part through the use of automated confirmation/acknowledgment systems operated by clearing agencies registered with the

Commission ("registered clearing agencies"). These systems have provided substantial efficiencies and cost savings by ensuring timely settlement and eliminating some of the time consuming and expensive manual processing associated with paper confirmations. The Board views these systems as a critical part of the national system of clearance and settlement mandated by Section 17A of the Act.<sup>4</sup>

Board rule G-15(d)(ii) requires that customer transactions in municipal securities which are effected on delivery versus payment or receipt versus payment ("DVP/RVP") settlement basis must, if eligible for processing in an automated confirmation/acknowledgment system, be confirmed and acknowledged through such a system. The rule currently specifies that the confirmation/acknowledgment system must be one operated by a registered securities clearing agency. Other self-regulatory organizations ("SROs") in the securities market also have similar rules requiring confirmation/acknowledgment through registered clearing agencies. Based on a request from a private vendor, it appears some private vendors, who are not registered securities clearing agencies, nevertheless may wish to market confirmation/acknowledgment services to brokers, dealers and municipal securities dealers.

The Board believes that competition among confirmation/acknowledgment service providers is a desirable goal and ultimately will make the clearance and settlement process more efficient and responsive to the needs of the securities industry. At the same time, the Board believes that, if private vendors are to provide a clearance or settlement service that previously has been provided only by registered clearing agencies under supervision of the Commission, appropriate safeguards must be provided to assure that the systems offered by private vendors are reliable and are effectively integrated into the national system of clearance and settlement.

The proposed rule change would allow brokers, dealers and municipal securities dealers to comply with rule G-15(d)(ii) through the use of confirmation/acknowledgment systems operated by non-registered "qualified vendors." To become a "qualified vendor" of confirmation/acknowledgment services, an entity would have to:

- For each transaction that it processes in its confirmation/acknowledgment system, deliver a trade

<sup>3</sup> At this time, the Commission staff intends to indicate that a vendor's initial Auditor's Report is not unacceptable and that the vendor therefore is a qualified vendor for purposes of Rule G-15 by issuing a letter to the vendor stating that it will not recommend enforcement action against any of the Board's member organizations that elect to use the confirmation/affirmation services of the vendor.

<sup>4</sup> 15 U.S.C. 78q-1.

record to a registered clearing agency, obtain a control number, cross reference the control number to the confirmation/acknowledgment, electronically deliver any acknowledgment received from a customer or a customer's agent to the registered clearing agency and include such control number when delivering acknowledgments to the clearing agency.

- Certify to the integrity and capacity of the electronic confirmation/acknowledgment system and that it will maintain monitoring and contingency procedures.

- On an annual basis, submit an independent auditor's report to the Commission staff which the Commission staff does not object to.

- Notify the Commission staff in writing of any material changes in the systems by which it offers electronic confirmation/acknowledgment services.

- Submit to the Board copies of any of the above filings with the Commission staff within ten business days.

- Supply supplemental information regarding its confirmation/acknowledgment services, as requested by the Board or the Commission staff.

The Board believes that these requirements for a vendor to become and remain qualified are necessary to assure that the confirmation/acknowledgment services used in the securities industry are reliable and are integrated into the national system of clearance and settlement. The proposed rule change is responsive to the Commission staff's request (contained in a letter, dated November 25, 1997 from Mr. Richard R. Lindsey, Director, Division of Market Regulation) that SROs consider adoption of uniform rule amendments which allow vendors to provide confirmation/acknowledgment services under circumstances similar to those specified in the proposed rule change.<sup>5</sup>

(b) As set forth in Section 15B(b)(2)(C) of the Act,<sup>6</sup> the Board has the authority to adopt rules to "foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities."

The Board's role in this area is given additional direction by Section 17A of the Act,<sup>7</sup> which mandates the creation

of a national system of automated clearance and settlement of securities transactions. Section 17A expressly includes municipal securities within the stated objectives.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will have any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all brokers, dealers and municipal securities dealers involved in DVP/RVP customer transactions.

*(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.

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

Within thirty-five 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 ninety 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W.,

Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR-MSRB-98-06 and should be submitted by May 4, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39831; File No. SR-NASD-98-20]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Permitting Qualified Vendors to Provide Confirmation and Affirmation Services to Institutional Customers**

April 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 5, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NASD. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The NASD Regulation, Inc. ("NASD Regulation") is proposing to amend Rule 11860 of the NASD's Uniform Practice Code to permit members to use the facilities of a Qualified Electronic Vendor for electronic confirmation and affirmation of depository eligible transactions. Below is the text of the proposed rule change (proposed new language is in *italics*; proposed deletions are in *brackets*):

11860. Acceptance and Settlement of COD Orders

(a) No member shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of

<sup>5</sup> The Commission notes that the proposed rule change addresses the concerns raised by the Petition for Rulemaking filed by Thomson Financial Services ("Thomson") with the Commission in December 1996. Thus, the Commission will respond to Thomson's petition after the final disposition of the proposed rule change.

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

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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