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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39835; File No. SR-MSRB-98-5]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Board's Transaction Reporting Program

April 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-98-5). 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 Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change concerning the Board's Transaction Reporting Program ("Reporting Program"). The proposed rule change states the Board's intention to publish for comment five sample Daily Reports containing summary price and volume information on inter-dealer and customer municipal securities transactions reported by dealers under rule G-14. The proposed rule change also states that the Board intends to make the Daily Report available on an operational basis in the third quarter of 1998. The proposed rule change is as follows.

Notice—Sample Transaction Reporting Data Available for Review

Since 1995, rule G-14 has required dealers to report to the MSRB their inter-dealer transactions in municipal securities via the automated comparison system for municipal securities operated by National Securities Clearing Corporation ("NSCC"). The Board has used this information to create a database of transaction information used by regulators for market surveillance purposes. The Board also uses the reported transaction information to create a daily public report summarizing price and volume information for

municipal securities that were reported as trading in the inter-dealer market four or more times on the previous business day. The Daily Report, which is made available on T+1 prior to the beginning of the trading day, is used by market participants to help gauge the value of municipal securities. The Board currently has eight subscribers to the Daily Report. Most of the subscribers are information vendors that redistribute the information to their own subscribers and/or use the information in various securities valuation products that they market.

In 1996, the Board filed plans with the Commission to add transactions between dealers and customers to the Reporting Program. Customer transaction data will be included in the surveillance database that the Board makes available to market regulators, and in the Daily Reports of price and volume activity. Since March 1, 1998, dealers have been required to submit customer transaction data on a daily basis.¹ Beginning April 9, 1998, the MSRB will publish samples of a proposed Daily Report that includes both customer and inter-dealer transaction data and will invite public comment on the sample reports.

The criteria for inclusion of municipal securities on the sample Daily Reports are the same as for the current inter-dealer Daily Report. If a municipal security (identified by a CUSIP number) is reported as having been traded four or more times on a given day, the high, low and average price and par value total of all of the trades reported in that security will be on the Daily Report on the next morning. Calculation of average price also is the same as in the current inter-dealer Daily Report. It is an arithmetic mean and is based exclusively on reported transactions (if any) between \$100,000 and \$1,000,000 in par value.

In applying the criteria for producing the sample Daily Reports, inter-dealer and customer transactions are considered together. This means that any combination of inter-dealer and customer transactions totaling four or more qualifies that CUSIP for inclusion of price information for that CUSIP on the Daily Report. In determining whether a reported transaction will be included for purposes of the Daily Report eligibility, certain transaction records are eliminated from consideration if they contain what appear to be obvious errors (e.g., invalid

or unknown CUSIP number, missing dollar price). An attempt is made to calculate a dollar price on when-issued transactions submitted with a yield, but no dollar price. However, such transactions are not considered for Daily Report purposes if there is insufficient securities data (e.g., coupon and dated date) to calculate dollar price from yield or if there is an indication that the securities are not calculated using a standard semiannual compounding formula and a 30/360 day-count.

The sample Daily Reports will be available beginning Thursday, April 9, 1998. The five sample Daily Reports will include information on transactions reported to the Board, by midnight on trade date, between March 30, 1998 and April 3, 1998. Market participants may wish to comment on the Daily Reports, particularly with respect to the format of the reports, so that the Board can make the Daily Reports as useful as possible. The sample Daily Reports will be available on the Board's Web site at WWW.MSRB.ORG and will be available in printed form from the Board's offices. Subscribers to the current inter-dealer Daily Report will be able to access the sample Daily Reports through the computer bulletin board that they normally use to access Daily Reports.

The Board requests that comment on the sample Daily Report be made in writing prior to May 8, 1998. The Board plans to make the Daily Report available on a daily basis during the third quarter of 1998. Prior to that time, the Board must file a plan with the Commission that specifies the final format of the report and that announces the yearly subscription price.

II. Self-Regulatory Organization's Statement of the Terms of Substance of 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 comment it received on the proposed rule change. The texts 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

1. Purpose

Since 1995, rule G-14 has required dealers to report to the MSRB their inter-dealer transactions in municipal

¹ See Exchange Act Release No. 37998 (Nov. 29, 1996), 61 FR 64782 (December 6, 1996) (approval of amendment to rule G-14); Exchange Act Release No. 39495 (December 29, 1997), 63 FR 585 (January 6, 1998) (delay of effectiveness to March 1, 1998).

securities via the automated comparison system for municipal securities operated by the NSCC. The Board has used this information to create a database of transaction information that can be used for market surveillance purposes and to produce daily report summarizing price and volume information for municipal securities that traded four or more times in the inter-dealer market on the previous business day.

In 1996, the Board filed plans with the Commission to add transactions between dealers and customers to the Transaction Reporting Program.² This will allow the Board to include customer transaction data in the surveillance database that the Board makes available to market regulators, and in the Daily Reports of price and volume activity in the market. The 1996 filing included an amendment to rule G-14, requiring dealers to report their customer transactions in municipal securities to the Board in certain prescribed formats.³ The Commission approved this amendment and it became effective March 1, 1998.⁴ The Board has been receiving customer transaction data since that time and is now ready to publish samples of a proposed Daily Report that includes both customer and inter-dealer transactions.

The criteria for inclusion of municipal securities on the sample Daily Reports will be the same as in the current inter-dealer Daily Report. If a municipal security (*i.e.*, CUSIP number) is reported as having been traded four or more times on a given day, the high, low and average price and par value total of all of the trades reported in that security will be on the Daily Report on the next morning. Calculation of average price will be an arithmetic mean and will be based exclusively on reported transactions (if any) between \$100,000 and \$1,000,000 in par value. In applying these criteria, inter-dealer and customer transactions will be considered together. This means that any combination of inter-dealer and customer transactions totaling four or more will trigger the inclusion of price information for that CUSIP on the Daily Report.

The five sample Daily Reports being released for comment will include information on inter-dealer and customer transactions reported to the Board, on trade date, between March 30,

1998 and April 3, 1998. They will be released during the week of April 7, 1998. The sample Daily Reports will be available on the Board's Web site at WWW.MSRB.ORG will be available in printed form from the Board's offices. Subscribers to the current inter-dealer Daily Report will be able to access the sample Daily Reports through the normal means of accessing Daily Reports, which is a computer bulletin board.

Although the Board is now receiving customer transaction data from dealers, it is not yet prepared to begin production of Daily Reports containing summary price and volume information on an operational basis. This is due to several factors, including the need for further testing of the software that produces the Daily Report, the need for additional efforts to assure that the data within the Daily Report reliably reflects transaction data reported to the Board, and the need for additional analysis to help assure that the data submitted by dealers is accurate, timely and complete. Prior to operational status being achieved, it also will be necessary for the Board to convert its current testing and development computer systems to operational systems, which require higher standards of reliability and operational readiness. The Board estimates that these objectives can be attained during the third quarter of 1998. Prior to that time, the Board will file a more complete plan with the final format of the Daily Reports and a detailed description of the process by which the Daily Report is produced.

2. Statutory Basis

The Board believes that the proposed rule change is consistent with Section 15B(b) (C) of the Act, which provides that the Board'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 Board believes that the proposed rule change is necessary so that Daily Report operations can begin as soon as possible. The Board believes that the operation of the Reporting Program, in general, will facilitate the statutory purposes noted above because the Reporting Program will provide an additional degree of price transparency in the municipal securities market and

will provide a surveillance audit trail that may be used by market regulators in furtherance of their regulatory purposes.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers and merely provides sample data for comment for a program the general parameters of which previously have been approved by the Commission.

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

Written comments were neither requested nor received on the proposed rule change.

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

The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. The proposed rule change merely describes the plan for the Board to provide a sample of transaction data from the municipal securities market so that the Board can expeditiously continue with its plan, previously approved by the Commission, to add customer transaction data to the existing Reporting Program. At any time within sixty days of the filing of the 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent

² Exchange Act Release No. 37859 (Oct. 23, 1996), 61 FR 56072 (October 23, 1996).

³ See MSRB Rule G-14(b)(ii) and Rule G-14 Transaction Reporting Procedures.

⁴ Securities Exchange Act Release 37998 (Nov. 29, 1996) (approval of amendment to rule G-14); Securities Exchange Act Release 39495 (Dec. 29, 1997) (delay of effectiveness to March 1, 1998).

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, 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-98-5 and should be submitted by May 5, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39837; File No. SR-NYSE-97-38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Amend Rule 13 to Create a New Percentage Order Type to be Called "Immediate Execution or Cancel Election"

April 8, 1998.

I. Introduction

On January 2, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² a proposed rule change to amend its Rule 13 to create a new percentage order type to be called "Immediate Execution or Cancel Election."

The proposed rule change was published for comment in the **Federal Register** on February 4, 1998.³ No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, NYSE Rule 13 provides for three types of percentage orders: straight limit, last sale, and "buy minus/sell plus." The Exchange believes that the election provisions of these existing types of percentage orders do not adequately meet the need of some investors placing percentage orders, particularly straight limit and last sale percentage orders. For example, investors rely on percentage orders as a way to trade along with the trend of the market without initiating price changes or otherwise influencing the equilibrium or buying and selling interest. However, certain executions of the existing types of percentage orders may initiate price changes, contrary to the "go along" expectations of the customer. In addition, executions of last sale percentage orders may not always be able to be effected, as the market trend may continue to move away from the price at which the order may be executed.

In response, the Exchange proposes to amend Rule 13 to create a new percentage order type to be called "Immediate Execution or Cancel Election." Under the terms of the proposal, the elected portion of a percentage order marked "Immediate Execution or Cancel Election" would be required to be executed immediately in whole or in part at the price of the electing transaction, or better.⁴ If the elected portion cannot be executed at that price or better, the election would be deemed canceled, and the unexecuted elected portion would revert back to a percentage order, subject to subsequent election or conversion.

For example, where an "Immediate Execution or Cancel Election" buy percentage order for 1000 shares at 30½ is placed with the specialist and the next transaction is for 500 shares at 30¼, the specialist would elect 500 shares and must immediately execute the order at the price of the electing transaction, 30¼, or better. If there is liquidity sufficient to execute only 300 shares at the price of the electing transaction, 30¼, or better, the specialist would execute 300 shares at that price and the election of the

remaining 200 shares would be canceled and the 200 shares would revert back to an unelected percentage order. If, instead, the market moves away from the price of the electing transaction to, for instance, 30¾, the election would be canceled⁵ and the unexecuted elected portion would revert back to a percentage order.⁶

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder applicable to a national securities exchange.⁸ The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by providing additional flexibility to investors entering percentage orders. Specifically, the proposed "Immediate Execution or Cancel Election" percentage order should allow investors to achieve their investment goals while continuing to limit the specialist's discretion in representing such orders. The Commission believes that requiring the specialist to treat an election as canceled, unless the elected portion can be executed immediately at the price of the electing transaction or better,¹⁰ should ensure that the investor will not be trading ahead of, nor lagging behind, the market when there is insufficient interest to execute the elected portion of

⁵ The specialist would not execute the order at 30¾, even though such an execution is within the maximum limit of the percentage order (30½). In this regard, an Immediate Execution or Cancel Election percentage order is treated similar to a last sale percentage order.

⁶ According to the NYSE, the Exchange's interpretation of the manner in which the proposed "Immediate Execution or Cancel Election" percentage order would operate corresponds with the examples developed by Commission staff and set forth above. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, and Michael Walinskas, Senior Special Counsel, Division, Commission, on April 7, 1998.

⁷ 15 U.S.C. 78f.

⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See note 4, *supra*.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 39583 (January 27, 1998) 63 FR 5829.

⁴ The Commission notes that the rule language does not explicitly state that the elected portion of the percentage order must be executed at a better price than the electing price, if immediately available. According to the Exchange, it is clearly implied that the percentage order must be executed at a better price than the price of the electing transaction, if immediately available. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, and Michael Walinskas, Senior Special Counsel, Division, Commission, on April 7, 1998.