

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 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-97-14 and should be submitted by May 19, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39900; File No. SR-MSRB-98-4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-32, on Disclosures in Connection With New Issues

April 22, 1998.

On March 25, 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-98-4) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² 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 Board has filed with the Commission a proposed rule change consisting of amendments to Rule G-32, on disclosures in connection with new issues. The proposed rule change will provide an alternate method of compliance by brokers, dealers and municipal securities dealers with their obligation to deliver official statements in final form to customers by settlement for certain new issues of variable rate demand obligations. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

Rule G-32. Disclosures in Connection With New Issues

(a) Disclosure Requirements. No broker, dealer or municipal securities dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer no later than the settlement of the transaction:

(i) a copy of the official statement in final form prepared by or on behalf of the issuer or, if an [a final] official statement *in final form* is not being prepared by or on behalf of the issuer, a written notice to that effect *together with a copy of an official statement in preliminary form, if any; provided, however, that if an official statement in final form is being prepared for new issue municipal securities issued in a primary offering that qualifies for the exemption set forth in paragraph (iii) of section (d)(1) of Securities Exchange Act Rule 15c2-12, a broker, dealer or municipal securities dealer may sell such new issue municipal securities to a customer if such broker, dealer or municipal securities dealer:*

(A) delivers to the customer no later than the settlement of the transaction a copy of an official statement in preliminary form, if any, and written notice that the official statement in final form will be sent to the customer within one business day following receipt thereof by the broker, dealer or municipal securities dealer, and

(B) sends to the customer a copy of the official statement in final form, by first class mail or other equally prompt means, no later than the business day following receipt thereof by the broker, dealer or municipal securities dealer; and

(ii) No change.

[In the event an official statement in final form will not be prepared by or on behalf of the issuer, an official statement in preliminary form, if any, shall be sent

to the customer with a notice that no final official statement is being prepared.]

Every broker, dealer or municipal securities dealer shall promptly furnish the documents and information referred to in this section (a) to any broker, dealer or municipal securities dealer to which it sells new issue municipal securities, upon the request of such broker, dealer or municipal securities dealer.

(b) No change.

(c) Definitions [of New Issue Municipal Securities and Official Statement].

For purposes of this rule, the following terms have the following meanings:

(i)-(iii) No change.

(iv) The term "*primary offering*" shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7).

* * * * *

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 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

The Board is proposing an amendment to Rule G-32, on disclosures in connection with new issues, that would permit brokers, dealers and municipal securities dealers ("dealers"), selling variable rate demand obligations to customers during the underwriting period, to deliver a preliminary official statement by no later than settlement and to send the official statement in final form within one business day of receipt from the issuer, provided these variable rate demand obligations qualify for the exemption provided under subparagraph (d)(1)(iii) of Rule 15c2-12 under the Act ("Rule 15c2-12").

Background. Rule G-32 provides that no dealer shall sell any new issue municipal securities to a customer unless that dealer delivers to the

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

customer, no later than the settlement of the transaction, a copy of the official statement in final form or, if an official statement in final form is not being prepared, a written notice to the effect together with an official statement in preliminary form, if any.³ The rule is designed to ensure that a customer who purchases a new issue municipal securities is provided with all available information relevant to his or her investment decision by settlement of the transaction.

The structure of Rule G-32, as currently in effect, is premised on the standard industry practice of issuers delivering the securities to the underwriters two or more weeks after the sale date for the securities (hereinafter referred to as the "Bond Delivery Period").⁴ The rule was originally adopted by the Board in 1977⁵ and was amended substantially to its current form in 1985.⁶ In 1989, the Commission promulgated Rule 15c2-12,⁷ which requires underwriters in primary offerings subject to the rule, among other things, to contract with issuer to receive final official statements within seven business days after any final agreement to purchase, offer or sell municipal securities and to receive these statements in sufficient time to accompany any confirmation that request payment from any customer. At the time Rule 15c2-12 was drafted, the industry's standard Bond Delivery Period was two or more weeks.⁸ Presumably, Rule G-32's official

statement delivery obligation was premised, at least in part, on this timing requirement.

The Board has previously sought to make Rule G-32 consistent with the provisions of Rule 15c2-12. In 1996, the Board published a notice requesting comments on a draft amendment to Rule G-32 that, among other things, would have expedited the time that customers are provided with a final official statement for primary offerings subject to Rule 15c2-12 to the date of delivery of final money confirmations, as opposed to settlement, as is currently required.⁹ The draft amendment was based on the requirement under Rule 15c2-12 that underwriters contract with issuers to receive final official statements in sufficient time to accompany any confirmation that requests payment from any customer. However, the Board decided not to proceed with the draft amendment primarily due to commentators' complaints that frequent delays in obtaining the final official statement from the issuer would often make compliance with the accelerated timeframe impossible or unduly expensive and burdensome.¹⁰

In the interim, the Board had launched a review of the underwriting process which focused on, among other things, the manner and timeliness of delivery of official statements from issuers to underwriters under Rule 15c2-12 and from underwriters to the Board under Rule G-36.¹¹ The Board found that, in some instances, issuers do not meet their contractual obligation entered into with underwriters pursuant to Rule 15c2-12 to deliver official statements within seven business days after the date of final agreement to purchase, offer or sell the municipal securities. The Board noted that, if issuers are not meeting the current delivery requirement under Rule 15c2-12, it is possible that final official statements also are not being prepared in time to deliver to customers by settlement as required under Rule G-32. Thus, to assist the agencies charged with enforcing Rules G-32 and G-36 and to provide additional information to the Board in considering the effectiveness of such rules, the Board proposed certain revisions to Forms G-36(OS) and G-36(ARD) that would require that underwriters indicate, among other things, the date that final official statements are received from the

issuer and the expected date of closing on the underwriting. The revised forms went into effect on January 1, 1998 and are currently being used by underwriting. The revised forms went into effect on January 1, 1998 and are currently being used by underwriters.¹² The Board expects that information obtained through the revised forms, as well as, through dialogue with industry participants, will assist it in assessing the effectiveness of Rule G-32 in the municipal marketplace as it has evolved since 1985 and particularly since promulgation of Rule 15c2-12.

Proposed Amendment. In promulgating Rule 15c2-12 and in response to concerns raised by commentators that applying the provisions of the rule to variable rate demand obligations "might unnecessarily hinder the operation of this market,"¹³ the Commission provided an exemption to the rule for any such obligations that can be tendered by the holders thereof for purchase by the issuer or its agent at least as frequently as every nine months and that are in authorized denomination of \$100,000 or more ("Exempt VRDOs"). The decision by the Commission to exclude Exempt VRDOs from the operation of Rule 15c2-12 was consistent with the fundamental structural differences between such securities and most of the traditional market for municipal securities. In most variable rate demand obligation issues, particularly those that fall within the Exempt VRDO category, the purchase contract is not executed until the issue closing date or the immediately preceding day.¹⁴ Thus, in the vast majority of such issues, the Bond Delivery Period—the period between the purchase date and the closing date—is at most only one business day. As issuers typically do not authorize the printing of the official statement in final form until the execution of the purchase contract, underwriters usually do not receive the official statement in final form until the closing date at the earliest and, in many instances, the printed version is not available until after the closing date, at which point the issuer has already delivered the Exempt VRDOs to the underwriters.

³ The rule applies to all municipal securities (other than commercial paper) that are sold by a dealer during the issue's underwriting period, as such term is defined under Board rules.

⁴ The Bond Market Association states that "[i]t usually takes about one month from the sale date for the bonds to be actually ready to be delivered to investors." Public Securities Association, *Fundamentals of Municipal Bonds*, Fourth Edition (1990).

⁵ See Securities Exchange Act Release No. 15247 (October 19, 1978), 43 FR 50526 (October 30, 1978) (File No. SR-MSRB-77-12). The Commission approved several Board rules in this release, including G-32.

⁶ The Commission approved this amendment is Securities Exchange Act Release No. 22374 (August 30, 1985), 50 FR 36505 (September 6, 1985) (File No. SR-MSRB-85-11). Subsequent amendments have been limited to providing a definition of "underwriting period" and clarifying the exemption for commercial paper. In addition, the Board has filed with the Commission a proposed amendment that relates primarily to dealer-to-dealer dissemination of official statements. See File No. SR-MSRB-97-14 (December 22, 1997, amended March 12, 1998).

⁷ Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989).

⁸ For example, the seven business day time frame of paragraph (b)(3) of Rule 15c2-12 presumably anticipated a typical Bond Delivery Period of at least one and one-half weeks since the final official statement is generally expected to be available at least by closing of the underwriting transaction.

⁹ See MSRB Reports, Vol. 16, No. 3 (Sept. 1996) at 19-23.

¹⁰ See MSRB Reports, Vol. 17, No. 2 (June 1997) at 23-24.

¹¹ See MSRB Reports, Vol. 17, No. 2 (June 1997) at 3-16.

¹² See Securities Exchange Act Release No. 39545 (January 13, 1998), 63 FR 3368 (January 22, 1998) (File No. SR-MSRB-97-10).

¹³ See Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989).

¹⁴ This compressed time frame arises as a result of the fact that, as securities bearing short-term yields sold at par, the market dictates that pricing—i.e., the setting of the interest rate borne by the securities during the initial rate period—and settlement occur on a same-day or next-day basis.

The Board has determined that, because the Bond Delivery Period for Exempt VRDOs is at most one business day, it is often not possible for dealers to settle with customers—who expect to receive delivery of their securities on the issue date—without causing a violation of the requirement that they deliver the official statement in final form to such customers by settlement. As a result, the Board is proposing an amendment to Rule G-32 that would permit a dealer, selling new issue Exempt VRDOs, to deliver the official statement in preliminary form to the customer by settlement, together with a written notice that the official statement in final form will be sent to the customer within one business day of receipt. Thereafter, once the dealer receives the official statement in final form, it must send a copy to the customer within one business day of receipt. If no official statement in preliminary form is being prepared, the dealer would only be obligated to deliver by settlement the written notice regarding the official statement in final form and to send the official statement in final form upon receipt.¹⁵ The proposed amendment offers an alternative method of compliance with Rule G-32 in the case of Exempt VRDOs. Thus, in those limited circumstances where dealers may in fact receive the official statement in final form in sufficient time to deliver it to customers by settlement (e.g., if an issuer approves completion of the official statement in final form prior to execution of the purchase contract), dealers would have the option of complying with the existing provision of the rule by delivering the official statement in final form to the customer by settlement.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.¹⁶ The Board

believes that the proposed rule change will ensure that the primary market in municipal securities continues to experience adequate levels of disclosure without disruption to the market for variable rate demand obligations.

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, because it would apply equally to all brokers, dealers and municipal securities dealers.

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.

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

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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, NW, Washington, DC 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 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-98-4 and should be submitted by May 19, 1998.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39893; File No. SR-NASD-98-23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to the NASD's Options Position Limits Rule

April 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ notice is hereby given that on March 10, 1998, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

NASD Regulation is proposing to amend Rule 2860(b) of the of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to: (1) increase the position limits on conventional equity options to three times the basic position limits for standardized equity options on the same security; (2) disaggregate conventional equity options from standardized equity options and FLEX Equity Options for position limit purposes; and (3) provide that the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption. Below is the text of the proposed rule change. Proposed new

¹⁵ As in the current rule, if no official statement in final form is being prepared, such dealer would deliver to the customer by settlement the official statement in preliminary form, if any, and written notice to the effect that an official statement in final form is not being prepared. If neither a final nor a preliminary official statement is being prepared, the dealer would only be obligated to deliver by settlement the written notice to the effect that no official statement in final form is being prepared.

¹⁶ Section 15B(b)(2)(C) states 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 transaction 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.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).