

the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either an Adviser or any entity that controls, is controlled by, or is under common control with an Adviser.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39546; File No. SR-MSRB-97-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting and Transaction Assessments

January 13, 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 December 23, 1997, 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-97-17). 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 to rule A-13 on Underwriting and Transaction Assessments. The proposed rule change to rule A-13 would clarify that the fee currently assessed for inter-dealer transactions reported to the Board will not automatically apply to customer transactions once they are reported under Board rule G-14. The text of the proposed rule change is below. Additions are in italics. Rule A-13 + Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers.

(a)-(b) No change.

(c) Transaction Assessments. Each broker, dealer and municipal securities

dealer shall pay to the Board a fee equal to .0005% (\$0.005 per \$1,000) of the total par value of *inter-dealer* municipal securities sales that it reports to the Board under rule G-14(b). For those transactions reported to the Board by a broker, dealer or municipal securities dealer on behalf of another broker, dealer or municipal securities dealer, the transaction fee shall be paid by the broker, dealer or municipal securities dealer that reported the transaction to the Board. Such broker, dealer or municipal securities dealer may then collect the transaction fee from the broker, dealer or municipal securities dealer on whose behalf the transaction was reported.

(d)-(f) No change.

#### 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 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 currently assesses dealers a fee equal to .0005% of par value of the dealers' inter-dealer sales transactions in municipal securities, as reported to the Board under rule G-14(b). As indicated in Board rule filings and notices concerning the fee, this fee was intended to apply exclusively to inter-dealer transactions.<sup>1</sup> Since the language of rule A-13 was written when inter-dealer transactions were the only transactions that were being reported to the Board, rule A-13(c) now simply states that the transaction assessment will apply to "municipal securities sales that [the dealer] reports to the Board under rule G-14." In its rule filings and notices on rule A-13(c), the Board stated its intent to add customer transactions to those reported under rule G-14(b). The Board also noted that, once customer transactions are reported to the Board under rule G-14, the Board would review the use of customer

transaction activity as a means of assessing fees. The Board, however, did not intend that the fee set for inter-dealer transactions would apply automatically to customer transactions that are reported under rule G-14.

The Board is in the process of implementing the customer transaction phase of the Transaction Reporting Program. This will result in dealer-customer transactions, as well as inter-dealer transactions, being reported to the Board under rule G-14(b), beginning in March 1998. To clarify that the current language of rule A-13(c) applies only to inter-dealer transactions, the proposed rule change simply adds the word "inter-dealer" to modify "municipal securities sales." The Board continues to intend to review customer transaction activity, once it becomes available in the Transaction Reporting Program, as a means to more equitably assess fees.

###### 2. Basis

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

provide that each municipal securities broker and 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. Such rules shall specify the amount of such fees and charges.

##### 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 is simply a technical change in rule language not affecting the effect or application of the rule.

##### 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

Because the proposed rule change is merely a technical correction of rule language, 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

<sup>1</sup> See, e.g., SR-MSRB-95-13 and Commission Order of Approval, Securities Exchange Act Release No. 37197 (May 10, 1996).

19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. 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. 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 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-97-17 and should be submitted by February 12, 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. 34-39545; File No. SR-MSRB-97-10]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Forms G-36(OS) and G-36(ARD) and Recordkeeping, Operative on January 1, 1998

January 13, 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 November 26,

1997, 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-97-10). 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 revised Forms G-36(OS) and G-36(ARD) under rule G-36 and amendments to section (a)(xv) of rule G-8, on recordkeeping. The proposed rule change becomes operative on January 1, 1998.

#### 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

Rule G-36 requires that a broker, dealer or municipal securities dealer acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G-36(OS). If the securities advance refund an outstanding issue of municipal securities, rule G-36 requires that the underwriter also send to the Board copies of the advance refunding document and completed Form G-36(ARD). Forms G-36(OS) and G-36(ARD) are being revised to provide greater clarity to brokers, dealers and municipal securities dealers in the process of completing the forms as well as to provide additional information that would assist the enforcement

agencies in their enforcement activities relating to rules G-36 and G-32.

The revisions to Form G-36(OS) add the following new data elements: the date materials are received from the issuer, the date materials are sent to the Board, whether materials submitted consist of more than one document, the actual or expected date of delivery of securities to underwriters, whether the securities advance refund another issue, the SEC registration number, information regarding CUSIP-6 number assignments and the fax number of the preparer. The revisions to Form G-36(ARD) add the following new data elements: the date materials are received from the issuer, the date materials are sent to the Board, whether materials submitted consist of more than one document, the date of delivery of securities to underwriters, the SEC registration number and the fax number of the preparer. In addition, the layout of both forms is reorganized.

Rule G-8(a)(xv) currently requires brokers, dealers and municipal securities dealers acting as underwriters in most primary offerings of municipal securities to maintain certain records relating to such primary offerings and the receipt and sending of materials as required under rule G-36. Rule G-8(a)(xv) is being amended to require such brokers, dealers and municipal securities dealers to record and maintain additional information regarding the date of delivery of the issue to the underwriters, as well as to retain a copy of the receipt of sending the required forms and documents to the Board and a copy of the forms and documents sent. The additional records required under the amended rule will assist the enforcement agencies in their enforcement activities relating to rule G-36.

###### 2. Basis

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

As discussed above, the Board believes that the proposed rule change will provide greater clarity to brokers, dealers and municipal securities dealers