

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>7</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>9</sup> because it involves a due, fee, or other charge. At any time within 60 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.<sup>10</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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. 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-CHX-99-23, and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42090; File No. SR-MSRB-99-8]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G-14

November 2, 1999.

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> notice is hereby given that on September 7, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change. The proposed rule change is described in Items I, II, and 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 is filing this proposed rule change to institute a service (the "Service") to produce a daily public report containing information on individual transactions in frequently rated municipal securities (the "Daily Transaction Report" or "Report"). The transaction information in the Report would come from dealer reports made to

the Board pursuant to MSRB Rule G-14, which governs reports of sales or purchases. Rule G-14 currently requires dealers to report essentially all inter-dealer and customer transactions in municipal securities to the Board by midnight of the date of the trade.

The proposed Report would be the third product offered by the Board to increase the amount of price transparency in the municipal securities market. Like the Board's current Combined and Inter-Dealer Daily Reports, the proposed Daily Transaction Report would provide information on "frequently traded" issues (*i.e.*, issues on which at least four transaction reports were received for a given trade date). Also like the current Daily Reports, the proposed Report would be produced and made available electronically by approximately 7:00 a.m. on the business day following the trade date. Electronic Reports will be produced in the same three formats—printable, comma-delimited, and fixed record length—as the current Daily Reports.<sup>3</sup> However, unlike the current Daily Reports, the proposed Daily Transaction Report has been designed to provide transaction detail on each reported trade in a frequently traded issue, rather than merely providing the daily high, low and average prices.<sup>4</sup>

The proposed Daily Transaction Report would be available by subscription. To obtain a subscription it will be necessary to sign a subscription agreement, however, there will be no fee charged for the new Daily Transaction Report.

#### 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 an 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 section A, B, and C below, of the most significant aspects of such statements.

<sup>3</sup> The "printable" format can be printed with little or no change by an end-user. The "comma-delimited" and "fixed record length" files can easily be sorted or converted by an end-user's spreadsheet or other application program (*e.g.*, Microsoft Excel).

<sup>4</sup> The Board also will continue to use all the transaction information reported by dealers to maintain a market surveillance database. The surveillance database is available to the Commission, the National Association of Securities Dealers ("NASD") and the bank regulatory agencies responsible for the enforcement of Board rules.

brokerage activity in the E-Session, and believes that waiving brokerage fees will likely have little impact on the Exchange's revenues. According to the Exchange, waiving the fees on the few transactions to which they would otherwise apply will allow the Exchange to simplify its communications to members about the fees. Telephone conversation between Paul B. O'Kelly, Executive Vice President, CHX, and Joseph Morra, Attorney, Division of Market Regulation, SEC, October 28, 1999.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

A long-standing goal of the Board is to provide market participants with information about the value of municipal securities.<sup>5</sup> Over the past five years, with the advent of the Transaction Reporting Program, the Board has been working toward making transaction price information "transparent" in the marketplace and seeking ways to make that information more comprehensive and contemporaneous.<sup>6</sup> The new Daily Transaction Report represents the next step in that continuing process.

The Daily Transaction Report builds upon two earlier phases of transparency—the Board's Inter-Dealer Daily Report<sup>7</sup> and the Combined Daily Report.<sup>8</sup> Whereas the Inter-Dealer and Combined Daily Reports provide daily high, low and average prices for frequently traded issues of municipal securities, the proposed Daily Transaction Reports will provide individual information for each reported transaction in frequently traded issues. The Board believes that the individual transaction data on the new report, which will include par value and time of trade for each transaction as well as price, will provide a more complete picture of the market than the currently available Daily Reports.

As with the Inter-Dealer and Combined Daily Reports, "frequently traded" issues will be defined as those issues trading at least four or more times on the business day for which the prices are reported, and the Daily Transaction Report will be made available on the morning of the next business day after trade date. As part of its effort to make more comprehensive data available, the Board intends to monitor the impact of the new report in the market. After the new report has been operational for a period of time, the Board will review its operation and will consider whether to lower the "frequently traded" threshold. Doing so would have the effect of listing

more issues and more prices in each day's report and would make the report even more comprehensive in its representation of market activity.

The Board also is reviewing various options for collecting and disseminating transaction information on a more contemporaneous basis. As part of this effort, the Board has created a web site that simulates the kind of information that a "real-time" system might provide and how it might be presented to investors.<sup>9</sup> This demonstration system is available at the Board's web site at [www.msrb.org](http://www.msrb.org). The Board welcomes comments from market participants on the demonstration system.

*Background Information on Board Transparency Initiatives.* The Board began disseminating price and volume information on municipal securities in 1995 after adopting an amendment to MSRB Rule G-14 that requires essentially all inter-dealer transactions to be reported to the Board via the automated comparison system operated by National Securities Clearing Corporation.<sup>10</sup> This transaction reporting requirement dovetailed with existing automated clearance requirements in MSRB Rule G-12(f) and allowed dealers to begin transaction reporting with relatively few changes to their own trade processing systems.

Each business day since its inauguration in January 1995, the Inter-Dealer Daily Report has provided statistics on total inter-dealer market activity reported for the previous day and information about price and volume for each issue that was frequently traded on that day. The report includes the total par value traded in each frequently traded issue, and the high, low and average<sup>11</sup> prices for the trading day.

The design of the Inter-Dealer Daily Report was based upon aspects of the municipal securities market that distinguish it from the exchange-listed and Nasdaq markets. A primary distinguishing characteristic of the municipal securities market is the large number of outstanding issues. There are approximately 1.3 million municipal securities that are distinct, non-fungible entities for purposes of trading and

reporting, compared to a much smaller number of equity issues. The frequency of trading also differs substantially from patterns in the exchange and Nasdaq markets. While, on any given day, a certain number of municipal securities are traded frequently, the list of these frequently traded issues is continually changing over time. When frequent trading does occur in an issue, it generally occurs in connection with issuance and then subsides as "buy and hold" investors obtain the securities and offerings in the issue disappear completely.

In designing the Inter-Dealer Daily Report, the Board adopted a threshold of four trades a day as the definition of "frequently traded." Only on issues for which there are four or more transaction reports on a given day are prices given on the Daily Report. The Board constructed the Daily Report in this manner because of the concern that an isolated transaction may not necessarily provide a reliable indicator of "market price" and might be misleading to an observer not familiar with the market. At the same time, the Board made a commitment to review the use of the Inter-Dealer Daily Report as experience was obtained and eventually move to a more contemporaneous and comprehensive price transparency report.<sup>12</sup>

In August 1998, after adopting amendments to MSRB Rule G-14 to require dealers to report their customer transactions to the Board each night, production of a Combined Daily Report began.<sup>13</sup> This report incorporates both inter-dealer and customer transaction information. Like the Inter-Dealer Daily Report, the format of high, low and average prices was used and only issues that are reported as having traded four or more times on a given trade date are included. However, since both customer and inter-dealer transactions are taken into account, the number of issues meeting the "frequently traded" threshold each day went from approximately 200 appearing each day

<sup>5</sup> See e.g., "From the Chairman," *MSRB Reports*, Vol. 8, No. 5 (December 1998) at 2.

<sup>6</sup> See, e.g., "Board to Proceed with the Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994) at 13; Vol. 14, No. 5 (December 1994) at 3-6; and "Transaction Reporting Program for Municipal Securities," *MSRB Reports*, Vol. 15, No. 1 (April 1995) at 11-15.

<sup>7</sup> See Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

<sup>8</sup> See Securities Exchange Act Release No. 40337 (August 19, 1998), 63 FR 45544 (August 26, 1998).

<sup>9</sup> See File No. SR-MSRB-99-9 (September 7, 1999).

<sup>10</sup> See "Reporting Inter-Dealer Transactions to the Board; Rule G-14," *MSRB Reports*, Vol. 14, No. 1 (January 1994), at 13.

<sup>11</sup> Unlike the reported high and low prices, the average price in the Inter-Dealer Daily Report is computed including only those trades having a par value between \$100,000 and \$1 million. Since the prices of smaller, "odd lot" transactions and large position movements over \$1,000,000 may be affected by the very size of the transaction, the Board decided to omit these transactions from the "average price" computation.

<sup>12</sup> See, e.g., "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Commission noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." See Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

<sup>13</sup> See Securities Exchange Act Release No. 40337 (August 19, 1998), 63 FR 45544 (August 26, 1998), "Availability of Information on Transactions in Municipal Securities: Rule G-14," *MSRB Reports*, Vol. 19, No. 1 (February 1999) at 23.

on the Inter-Dealer Report to approximately 1,000 on the Combined Daily Report.<sup>14</sup>

**Description of Proposed Report.** The proposed Daily Transaction Report will provide information on individual transactions in frequently traded municipal securities. It will display, for each transaction in such a security, the CUSIP number, a short description of the issue, the par value traded, the time of trade reported by the dealer, and the price of the transaction.<sup>15</sup> Transactions will be categorized as one of three transaction "types": (i) sales by dealers to customers, (ii) purchases by dealers from customers, and (iii) inter-dealer trades. Reports will be organized by issue, with the most frequently traded issues listed first. Within an issue, trades will be listed in order of time of trade, from the earliest reported time of trade to the latest.<sup>16</sup> Although the size of each day's report will depend on market activity, it is expected that the proposed Daily Transaction Report on average will provide information on approximately 9,000 individual transactions in approximately 1,000 frequently-traded issues each day. Sample copies showing the appearance of the proposed Daily Transaction

Report can be obtained at the Board's web site at [www.msrb.org](http://www.msrb.org).

**Subscriptions to the Proposed Report.** The proposed Daily Transaction Report will be available by subscription. To obtain a subscription, it will be necessary to sign a subscription agreement, but there will be no fee. In addition, recent Daily Transaction Reports will be available for examination, also free of charge, in the Board's Public Access Facility in Alexandria, Virginia. The Board expects to disseminate the Daily Transaction Report to subscribers mainly via the Internet.<sup>17</sup> Details on how to subscribe, how to obtain a subscription agreement, and the method for accessing files via the Internet will be made available before operation begins.<sup>18</sup> The Board expects that the proposed Service to provide the Daily Transaction Report will be made operational by December 1999.<sup>19</sup>

## 2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)<sup>20</sup> 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. \* \* \*

<sup>17</sup> Current subscribers to the Inter-Dealer and Combined Daily Reports now download their files from the Board's electronic bulletin board system. The Board plans eventually to phase out the electronic bulletin board system and rely exclusively on the Internet delivery mechanism. However, the Board plans to continue to offer the existing Daily Reports and the proposed new Daily Transaction Report via the electronic bulletin board to current subscribers until sufficient time has been given for them to make the conversion to the internet delivery mechanism. Access to electronic copies of the new Daily Transaction Report will be made available each day at the same time to all subscribers regardless of whether the means of access of the specific subscriber is via the internet or the electronic bulletin board.

<sup>18</sup> The Board expects to use an internet-based File Transport Protocol (FTP) method to download files to subscribers. After signing and sending to the Board the subscription agreement, a subscriber will be assigned a log-in name and password for this purpose.

<sup>19</sup> Persons interested in being notified by e-mail of this and other Board announcements may obtain this service by visiting the Board's web site and clicking on "Subscribe to E-mail."

<sup>20</sup> 15 U.S.C. 78o-4(b)(2)(C).

## 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 because it applies equally to all dealers in municipal securities.

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

During 1999, the Board began to consider how to improve upon the Combined Daily Report and decided to release individual transaction data on frequently traded issues. On April 29, 1999, the Board made five sample Daily Transaction Reports available for public comment at its web site and in printed form at Board offices. As discussed below, the sample reports were formatted essentially the same as the proposed Daily Transaction Report now being filed with the Commission, except that transactions were divided into two, rather than three, "types."

Responses to the request for comment on the sample Daily Transaction Reports were received from the following commentators.

Raymond James and Associates  
("Raymond James")<sup>21</sup>

Mark A. Condic ("Condic") (two letters)<sup>22</sup>

A.G. Edwards & Sons, Inc. ("A.G. Edwards")<sup>23</sup>

The Bond Market Association  
("TBMA")<sup>24</sup>

Lebenthal & Co., Inc. ("Lebenthal")<sup>25</sup>

**General Comments.** Four commentators (Raymond James, A.G. Edwards, TBMA, and Lebenthal) supported the proposed Daily Transaction Report and believe it will be useful to market participants.<sup>26</sup> The fifth commentator (Condic) supported the new Report in his first letter to the

<sup>21</sup> Electronic mail from Mark Magee, Raymond James and Associates, to Bryan Johnson, MSRB, dated May 4, 1999.

<sup>22</sup> Letters from Mark A. Condic to the Municipal Securities Rulemaking Board dated June 15, 1999 ("June 15 letter") and June 22, 1999 ("June 22 letter").

<sup>23</sup> Letter from Clayton Erickson, A.G. Edwards and Sons, Inc., to Diane Klinke, MSRB, dated June 28, 1999.

<sup>24</sup> Letter from Sarah M. Starkweather, TBMA, to Diane Klinke, MSRB, dated July 6, 1999.

<sup>25</sup> Letter from James A. Lebenthal, Lebenthal & Co., Inc., to Diane Klinke, MSRB, dated July 21, 1999.

<sup>26</sup> TBMA's support for this proposed rule change was further clarified in a telephone call between Harold Johnson, MSRB, and Paul Saltzman, TBMA, on October 5, 1999. Telephone call between Larry Lawrence, MSRB, and Kelly Riley, Division of Market Regulation, SEC, on October 7, 1999.

<sup>14</sup> In determining whether a reported customer transaction will be included for purposes of any transparency report, reported transactions are checked for errors and certain transactions are eliminated from consideration if they contain what appear to be obvious errors (e.g., invalid or unknown CUSIP number, missing dollar price). The Board monitors the data it receives for errors and informs the dealer or its agent of each error that would eliminate a transaction from the Daily Report. The Board is working with dealers and enforcement agencies such as the NASD to improve the quality of reported data and to increase dealer compliance with Rule G-14 reporting requirements.

<sup>15</sup> A dollar price is given for each transaction listed on the report. If the dealer submits a yield with the transaction report, the yield is included with the dollar price. There are instances, however, when a yield is not reported. For example, yields are not submitted by dealers for secondary market inter-dealer transactions because the automated comparison system used to report inter-dealer trades cannot accept yield information on those transactions. In addition, dealers cannot report a yield for customer transactions done on a dollar price basis that involve defaulted or variable rate securities. Transactions including either customers or dealers in new issues without a determined settlement date may be effected and reported by dealers either with a dollar price or a yield. The MSRB Transaction Reporting System will calculate a dollar price from yields submitted for these transactions, using an assumed settlement date if necessary. There must be, however, sufficient securities data available to make this calculation (e.g., coupon, dated date, maturity date, first interest payment date, etc.). For additional information, see "Public Reporting of Transactions in Municipal Securities: Rule G-14," *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 25-27.

<sup>16</sup> Where trades are submitted by dealers with an invalid time or no time of trade, the report shows the time of trade as "0."

Board but expressed doubt about its usefulness in his second letter.

*Further Enhancements to the Report.* One commentator (Condic) suggests adding a summary table to the Report keyed to bond ratings, which would show yields and the changes in yield that occur each day. The Board determined not to add such a summary table. Ratings of municipal securities assigned by private bond rating organizations are not currently part of dealer reports to the Board. The Board recognizes that various types of end-users of transaction data may need enhancements and additions to the data (calculated yields, ratings, extended securities descriptions, etc.) and different means to access and use the data (such as automated search mechanisms and historical records). The Board's long-standing position has been that its primary role is to make available the basic transaction information that is reported to it by dealers. At the same time, the Board has encouraged other organizations to re-disseminate the data, and to "add value" to the data to target the needs of specific end users.<sup>27</sup>

With respect to bond ratings, the Board notes that TBMA currently makes a web site available that includes data from existing Daily Reports and that this site includes ratings as well as search features and other enhancements designed to make the information particularly useful to investors. The Board also notes that TBMA, in its comment letter on the proposed report indicates that it will continue to provide this kind of service, using the data that will be included in the proposed Daily Transaction Report. The Board believes that organizations such as TBMA are well positioned to meet specific end-user needs and that the Board's role should continue to be as provider of basic transaction data unless it becomes clear that a critical need for enhanced information in the market is not being met.

*Adding Yield-To-Call Information.* One commentator (A.G. Edwards) suggests that where the displayed yield on the Daily Transaction Report is a "yield to call," the transaction record should include the date and price of the call feature used for the price-yield calculation. The proposed Daily Transaction Report shows a yield for a transaction only if the dealer reported a yield. When reporting yields to the Board, dealers do not report the call features used for yield calculation, so

the information requested by the commentator is not available for inclusion on the Daily Transaction Report. While it would be possible for the Board to calculate yields from dollar prices for most transactions, and to show whether the yield was calculated to a call date and call price or to maturity, the Board has chosen not to add this enhancement to the report. In this regard, the Board notes that TBMA's web site currently does include calculated yields for the dollar prices shown.

*Distinguishing Inter-Dealer Transactions from Purchases from Customers.* In the format released for comment, the Daily Transaction Report identified a transaction as one of two types: (1) a sale to a customer, or (ii) "other," (i.e., a purchase by a dealer). Purchases by dealers either are purchases from customers or purchases on the inter-market, but these two types of dealer purchases were not separately identified in the initial draft version of the Daily Transaction Report. One commentator (A.G. Edwards) suggests that the Daily Transaction Report should segregate the two types of purchases by dealers, nothing that it may be relevant to some market analyses whether securities were bought on the inter-dealer market or bought from a customer. Another commentator (Lebenthal) also believes the Report should present inter-dealer prices and retail customer prices separately, in order to avoid misleading customers.

The Board agrees that it would be useful to distinguish between dealers' purchases from customers and from other dealers. Thus, in the proposed report, there are separate columns showing the prices for: (i) sales to customers, (ii) purchases from customers, and (iii) inter-dealer transactions.

*Addition of Dealer Identification to the Daily Transaction Report.* One commentator (Condic) states that, since the proposed report shows the prices of actively traced municipal securities, it should also show the name and telephone number or any dealer selling the securities. The Board notes that the existence of transaction information reported by a dealer does not indicate whether the dealer has additional securities of that issue to sell. The Board believes that this kind of proposal would be more appropriate to a quotation system rather than a transaction transparency system and therefore has declined to adopt this suggestion.

*Voiding Customer Transactions Where Spread is Over 25 Basis Points.* One commentator (Condic) suggests that

the Board adopt a rule that a transaction is voidable by a customer if the "spread" is more than 25 basis points. This view may be based upon the concern that a customer may buy a security from a dealer and on the next day find that the transaction was not effected at a fair market price.

Board Rule G-30 already addresses the issue of mis-priced securities transactions with customers. The rule states that prices to customers must be fair and reasonable, taking into account all relevant factors about the transaction. The Board historically has allowed the enforcement agencies charged with enforcing Board rules make determinations on whether particular transaction price is fair and reasonable because the enforcement agency is in the best position to determine the facts and circumstances of individual transactions. The Board notes that the surveillance data from the Transaction Reporting Program now provides to the enforcement agencies comprehensive, searchable information on transactions and transaction prices occurring in the market. This should enhance the ability of the enforcement agencies to enforce MSRB Rule G-30. Consequently, the Board is not undertaking further rulemaking with respect to the commentator's suggestion.

*Continued Production of Combined Daily Report.* In its comment letter, TBMA requests that the Board continue to produce the Combined Daily Report because that report's summary information could serve as the "gateway" to the detailed information of the Daily Transaction Report. TBMA notes that, if the Board does not continue production of the Combined Daily Report, the TBMA might create a similar summary report for its web site. This would be possible since the Daily Transaction Report includes all of the information necessary to produce a Combined Daily Report.

The Board intends to continue, at least initially, production of both the Combined Daily Report and the Inter-Dealer Daily Report after the new report goes into operation. However, the number of subscriptions to these older Daily Reports may diminish in the future as subscribers to the existing reports program their systems to use the more detailed information in the new report. After some time, if subscribership to the older Daily Reports diminishes markedly, the Board may file a proposed rule change with the Commission to discontinue production of the older Reports.

*Fees for new Daily Transaction Report.* The Inter-Dealer and Combined Daily Reports are each available by

<sup>27</sup> See, e.g., "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994) at 14.

subscription for \$15,000 annually. One commentator (Condic) states that the proposed Daily Transaction Report should be made available free of charge. Another commentator (TBMA) urges the Board to make transaction information available, electronically and without charge, to dealers for their internal use in market analysis and in their compliance efforts. As noted above, the Board has decided to make subscriptions to the proposed report free. Subscribers, however, will need to sign a subscription agreement that outlines the Board's disclaimer of liability, the proprietary nature of and usage restrictions on the CUSIP numbers and CUSIP descriptions contained in the report, and certain other matters.

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

Within 35 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 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 MSRB 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. 20549-0609. 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 office. All submissions should refer to File No. SR-MSRB-99-8 and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-29156 Filed 11-5-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-42091; File No. SR-NASD-99-15)

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the National Adjudicatory Council's Call For Review of Membership Decisions

November 2, 1999.

#### I. Introduction

On March 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to temporarily suspend the National Adjudicatory Council's ("NAC's") oversight of membership applications approved by district staff. On April 16, 1999, the Association filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change and amendment were published in the **Federal Register** on April 26, 1999.<sup>4</sup> On October 20, 1999, the NASD filed Amendment No. 2 to the proposal.<sup>5</sup> The Commission received no comments on the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (April 16, 1999) ("amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 41311 (April 20, 1998), 64 FR 20347.

<sup>5</sup> See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant director, Division, Commission (October 18, 1999) ("Amendment No. 2"). In Amendment No. 2, the NASD requests that the proposed end date of the temporary suspension of NASD Rule 1015 be changed from October 31, 1999 to December 31, 1999.

interested persons on Amendment No. 2.

## II. Description of the Proposal

The purpose of the proposed rule change is to temporarily suspend the NAC's oversight responsibilities under NASD rule 1015 requiring review of membership decisions made by NASD district staff, while the Association considers other options for review of the membership admission process. Currently, NASD Rule 1015(a)(2) provides that a membership decision rendered by the Department of Member Regulation shall be subject to a call for review by the NAC. According to the NASD, the NAC has never been able to adequately perform this function. Therefore, the Association proposes formal suspension of this function until December 31, 1999,<sup>6</sup> while it attempts to devise and implement new review procedures.

In August 1997, the SEC approved substantial revisions to the membership review processes to conform the rules to the requirements of the August 8, 1996 SEC Order correcting abuses in certain NASD procedures ("Order").<sup>7</sup> Following the Order, the authority to approve membership application was transferred from NASD District Business Conduct Committees to NASD Regulation staff.<sup>8</sup> Applicants granted restricted membership or refused admission could appeal to the National Business Conduct Committee ("NBCC"), the NAC's predecessor, which was also charged with oversight of admissions.<sup>9</sup> During consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions. Nonetheless, the NBCC, which requested the change, was primarily concerned about decisions approving unrestricted memberships. Since a successful applicant would have no incentive to appeal an unrestricted admission, the NBCC wished to have a

<sup>6</sup> *Id.*

<sup>7</sup> Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc.).

<sup>8</sup> Securities Act Release Nos. 39350 (Nov. 21, 1997), 62 FR 64000 (Dec. 3, 1997) and 39470 (Dec. 19, 1997), 62 FR 67927 (Dec. 30, 1997) (Notice and Notice and Accelerated Approval of File No. SR-NASD-97-81, respectively.)

<sup>9</sup> The Association asserts that during consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions.