

change is consistent with the requirements of Section 17A of the Act and the rules and the regulations thereunder applicable to DTC in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions.

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

DTC does not believe that the proposed rule change will impose any burden on competition.

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

DTC has not solicited nor received written comments on the proposed rule change. DTC will inform the Commission of any written comments it receives.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>4</sup> of the Act and Rule 19b-4(f)(4)<sup>5</sup> thereunder because it effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in DTC's control or for which DTC is responsible and does not significantly affect DTC's or its participants' respective rights or obligations. At any time within 60 days of the filing of such 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2004-08 on the subject line.

#### *Paper Comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-DTC-2004-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2004-08 and should be submitted on or before September 28, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50294; File No. SR-MSRB-2004-02]

#### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to the MSRB's Rule G-12(f) on Automated Comparison and G-14 on Transaction Reporting, and to the Implementation of a Facility for Real-Time Transaction Reporting and Price Dissemination**

August 31, 2004.

On June 2, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change relating to the MSRB's implementation of real-time transaction reporting and price dissemination. The proposed rule change was published for comment in the **Federal Register** on June 29, 2004.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> This order approves the proposed rule change.

#### **I. Description of the Proposed Rule Change**

The MSRB's proposed rule change relates to Rule G-12(f), on automated comparison, Rule G-14, on transaction reporting, and the implementation of a facility for real-time transaction reporting and price dissemination (the "Real-Time Transaction Reporting System" or "RTRS"). The purpose of the proposed rule change is to increase transparency in the municipal securities market and to enhance the surveillance database and audit trail of transaction data used by enforcement agencies. The proposed rule change to Rule G-14 would require brokers, dealers, and municipal securities dealers ("dealers") to report transactions in municipal securities to RTRS within 15 minutes of the time of trade execution instead of by midnight on trade date, as is currently required. Upon receipt of this transaction data, RTRS would immediately perform automated error

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

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

<sup>3</sup> See Securities Exchange Act Release No. 49902 (June 22, 2004), 69 FR 38925 (June 29, 2004) ("Notice").

<sup>4</sup> See letter to Jonathan G. Katz, Secretary, Commission, from Leslie M. Norwood, Vice President and Assistant General Counsel, The Bond Market Association ("TBMA"), dated July 20, 2004 ("TBMA Letter").

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(4).

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

checking and would electronically disseminate prices, providing the municipal securities market with real-time transaction price transparency.

The MSRB expects the proposed RTRS facility for real-time collection and dissemination of transaction prices will become operational in January 2005, at which time MSRB would begin to disseminate transaction data electronically in real time. MSRB expects to make a second filing on the RTRS facility in the future, stating the date of effectiveness, describing the technical means of data dissemination, and proposing fees to be charged for RTRS data products.

The proposed RTRS facility would replace the existing Transaction Reporting System (TRS), which currently receives and disseminates transaction data in an overnight batch process. The proposed amendments to Rules G-12 and G-14 require dealer participation in RTRS and are designed to ensure that transactions are reported to RTRS in a timely manner.

## II. Summary of Comments

The Commission received one comment letter addressing the proposed rule change.<sup>5</sup> The TBMA Letter expressed support for the MSRB's goals, but expressed reservations regarding the proposal in its current form.<sup>6</sup> Specifically, TBMA believes that all trades on the first day of trading in a new issue should be exempt from the requirement to report within 15 minutes of trade execution (*i.e.* real-time reporting).<sup>7</sup> In addition, TBMA states that they "continue to express liquidity concerns for immediate dissemination of trades of bonds rated "BBB" or below in sizes over \$1 million."<sup>8</sup>

### A. New Issue Reporting

The proposed rule change generally would require dealers to report trades to the MSRB within 15 minutes, with certain limited exceptions. First, syndicate managers, syndicate members, and selling group members that effect trades in new issues on the first day of trading at the list offering price would be required to report such trades by the end of the first day of trading in the issue. Second, on a temporary basis, a dealer would be required to report trades within three hours of the time of trade if the CUSIP number and indicative data of the issue traded are not in the dealer's securities master file, the dealer has not traded the issue in the

previous year, and the dealer is not a syndicate manager or syndicate member for the issue. This provision would sunset automatically one year after RTRS implementation.

In its comment letter, TBMA reiterated its suggestion made in previous comment letters to the MSRB that all trades on the first day of a new issue be exempt from 15-minute reporting and, be submitted no later than end of day.<sup>9</sup> In the proposed rule change, MSRB acknowledged that the existing information dissemination services in the municipal securities market may not, in some cases, be capable of providing a dealer with such indicative information in a sufficiently timely manner for the dealer to update its securities master file, process the transaction, and then report the transaction in real-time.<sup>10</sup> Therefore, the proposed rule change provides that when a dealer has not traded an issue within the past year, a three-hour trade reporting requirement will apply rather than a 15-minute reporting requirement.

The proposed rule change also states that on the first day of trading in a new issue, the three-hour exception will be available to most dealers because they will be trading the issue for the first time.<sup>11</sup> However, by the terms of the three-hour exception, it is not available to dealers in the underwriting group (*i.e.*, the syndicate manager and syndicate members).<sup>12</sup> TBMA disagrees with this decision and states "we feel the exception is not adequate because it does not cover trades by a syndicate manager or syndicate member and sunsets after one year."<sup>13</sup> In the Notice, the MSRB stated that they intentionally made the three-hour exception temporary to help ensure that dealers, trade associations and information vendors will use the one-year period to respond to the need for more automated and timely updating of indicative data and that industry practice will evolve so that the purposes of real-time price transparency can be more fully realized for trades on the first day of trading in a new issue.<sup>14</sup> Furthermore, the MSRB noted that the three-hour exception should not be necessary for the syndicate manager and syndicate members because they do have, or should have, timely access to information on a new issue that they are underwriting.<sup>15</sup>

<sup>9</sup> See TBMA Letter, at 2 and 3.

<sup>10</sup> See *supra* note 3, at 38937.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See TBMA Letter, at 2.

<sup>14</sup> See *supra* note 3, at 38937.

<sup>15</sup> Although the three-hour exception is not available to dealers in the underwriting group, the

TBMA also noted that on "the first day trades are executed for a new issue, which is the day of formal award for a new issue, there will likely be trades reflecting that day's market environment, in addition to trades reflecting the booking of tickets at the prices agreed to by the original buyers days before."<sup>16</sup> TBMA argues that by mixing the two types of trade reports together, the prices would "not be any more or less informative if all trades in new issue were subject to end-of-day reporting."<sup>17</sup> With respect to the specific issue of "mixing" prices, the MSRB notes that syndicate and selling group trades done at the list price will be marked as such when they are disseminated.<sup>18</sup> Consequently, there should be no confusion about what these prices represent. In addition, the MSRB has stated that it is reviewing general market practices with respect to new issue offerings, including issues related to pre-award orders and the use of conditional trading commitments made before the time of formal award trade. As part of this process, the MSRB recently published a "Notice Requesting Comment on Draft Amendments to Rule G-34 to Facilitate Real-Time Transaction Reporting and Explaining Time of Trade for Reporting New Issue Trades."<sup>19</sup>

### B. Liquidity Concerns

Finally, TBMA states "we continue to express liquidity concerns for immediate dissemination of trades of bonds rated "BBB" or below in sizes over \$1 million."<sup>20</sup> TBMA suggests further study of this market segment to assess effects on liquidity before disseminating trade prices in real-time.<sup>21</sup> The MSRB noted in its filing that comment on this particular issue was mixed and that some investors expressed strong support for full transparency, specifically to include the

proposed rule change provides another exception from the real-time reporting requirement for list-price transactions by syndicate and selling group members. Such trades are likely to be voluminous and all executed in a short period of time, so that a 15-minute reporting deadline could present substantial operational challenges. Because of the operational difficulties and because the price information (the list price of the issue) is generally already available in the market at the time of trade execution, the proposed rule change allows these transactions to be reported at end-of-day. Trades that are not at list price, however, do not qualify for this exception and will have to be reported within 15 minutes unless another exception is available. See *supra* note 3, at 38937.

<sup>16</sup> See TBMA Letter, at 3.

<sup>17</sup> *Id.*

<sup>18</sup> See *supra* note 3, at 38937.

<sup>19</sup> See MSRB Notice 2004-18 (June 18, 2004), available at <http://www.msrb.org>.

<sup>20</sup> See TBMA Letter, at 4.

<sup>21</sup> See TBMA Letter, at 3 and 4.

<sup>5</sup> See *supra* note 4.

<sup>6</sup> See TBMA Letter, at 2.

<sup>7</sup> See TBMA Letter, at 3.

<sup>8</sup> See TBMA Letter, at 4.

market segment identified by TBMA.<sup>22</sup> In light of these comments, the MSRB has weighed the potential for liquidity problems against the potential for transparency benefits and has concluded that any liquidity problems that may occur with respect to the issues in question are likely to be temporary and will resolve over time as market participants make adjustments in response to the more transparent environment.<sup>23</sup> The MSRB also believes that the potential for transparency benefits, such as more accurate pricing, lower transaction costs for investors and increased investor confidence, outweighs the potential for short-term liquidity problems.<sup>24</sup>

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>25</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.<sup>26</sup> Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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.

In particular, the Commission finds that the proposed rule change will provide the market with more efficient pricing information, enhance the surveillance database and audit trail of transaction data used by enforcement agencies, and enhance investor confidence in the market. The Commission believes that real-time price transparency will enhance investor confidence by providing, for the first time, a comprehensive and contemporaneous view of the municipal securities market to any interested party. The Commission also believes

that the open availability of market prices should instill greater confidence that pricing mechanisms in the municipal securities market are fair, open, and efficient.

### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-MSRB-2004-02) be, and hereby is, approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50280; File No. SR-OCC-2004-13]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Borrowing Against the Clearing Fund

August 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 23, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would amend Article VIII (Clearing Fund), Section 5 (Application of the Clearing Fund), paragraph (e) of OCC's By-Laws, which authorizes OCC to borrow against the clearing fund in specified situations.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VIII, Section 5(e) of OCC's By-Laws authorizes OCC to take possession of and pledge as security for a loan cash and securities in its clearing fund under the following circumstances:

(1) If a clearing member is suspended and OCC is unable to obtain prompt delivery of or convert promptly to cash any asset credited to any of the clearing member's accounts; and as a result OCC deems it necessary or advisable to borrow funds to meet obligations arising out of the suspension or

(2) If OCC sustains a loss due to the failure of a bank or another clearing organization, and elects to borrow funds in lieu of immediately charging the loss to the clearing fund.

In either case, OCC must first determine that it cannot borrow the necessary funds on an unsecured basis and must use the proceeds from the borrowing solely for the purposes above. Such use of clearing fund assets are limited to a maximum of 30 days. After 30 days, the amount of the loan must be charged against the clearing fund.

In the event of a clearing member default, OCC may need immediate liquidity even before it has made the decision to suspend the clearing member. Historically, defaults tend to occur at 9 a.m. (CT) when clearing members' accounts are debited for options premiums, exercise settlement payments, and mark-to-market payments.<sup>3</sup> Although OCC may be able to make settlement by using its own cash or by borrowing against its unsecured credit lines, which are currently \$20 million, it is possible that those resources would not be sufficient.

In order to borrow against its secured lines of credit, which are currently \$150 million and are in the process of being doubled, using a defaulting member's clearing fund contributions or collateral OCC would have to (i) suspend the clearing member and (ii) have difficulty in obtaining or liquidating the defaulting clearing member's collateral.

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> 9 a.m. (CT) is also the time when members' accounts are debited for margin deficiencies; but margin payments, unlike premium, exercise settlement, and mark-to-market payments, are not pass-through payments.

<sup>22</sup> See *supra* note 3, at 38939.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> 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).

<sup>26</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

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

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