

proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to amend Commentary .04 to NYSE Amex Options Rule 903 to permit the Exchange to add additional strikes until the close of trading on the second business day prior to the expiration of a monthly, or standard, option in the event of unusual market conditions. NYSE Amex Options Rule 903 currently permits the Exchange to open additional series of individual stock options until the first calendar day of the month in which the option expires or until the fifth business day prior to expiration if unusual market conditions exist.<sup>5</sup> The Exchange claims that, under its current rules, if unusual market conditions occur anytime from five to two days prior to expiration, then market participants are unable to obtain a contract tailored to manage their risk.<sup>6</sup> According to the Exchange, options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security.<sup>7</sup> If, however, the price of the underlying stock moves significantly, the Exchange argues that there may be a market need for additional strike prices to adequately account for market participants' risk management in a stock.<sup>8</sup> Accordingly, the Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration of a monthly option in unusual market conditions.

The Exchange represents that the proposal does not raise any capacity concerns on the Exchange because the proposed change presents no material difference in impact from the current rules.<sup>9</sup> The Exchange notes that the proposed change allows for new strikes that it would otherwise be permitted to add under existing rules either on the fifth day prior to or immediately after expiration. The Exchange further represents that it discussed the proposed change with the Options Clearing Corporation ("OCC").<sup>10</sup> According to the Exchange, the OCC

represented that it is able to accommodate the proposal and will have no operational concerns with adding new series on any day, except the last day of trading an expiring series.<sup>11</sup> The Exchange states that, since the implementation of the fifth business day restriction on listing additional strikes, improved communications and the adoption of the Streamline Options Series Adds by OCC allows notification of new strikes in real time throughout the industry.<sup>12</sup>

## III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the proposed change extends the timeframe during which the Exchange may list additional series of individual stock options in unusual market conditions. The Commission believes that the proposed change will provide the investing public and other market participants with additional opportunities to tailor their investment and hedging decisions, thus allowing investors to better manage their risk exposure with additional series.<sup>15</sup>

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* at 58429 n.4.

<sup>13</sup> In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> In approving this proposal, the Commission notes that the Exchange has stated that, although the four additional days to list additional strike prices in the event of unusual market circumstances may generate additional quote traffic, the Exchange believes that any increased traffic will not become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurs. See Notice, *supra* note 3 at 58430.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEMKT-2012-41) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68472; File No. SR-MSRB-2012-08]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Consisting of Amendments To Streamline New Issue Information Submission Requirements Under MSRB Rules G-32 and G-34

December 19, 2012.

#### I. Introduction

On October 23, 2012, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("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 consisting of amendments to Rule G-8 (books and records); Rule G-14 RTRS Procedures;<sup>3</sup> Rule G-32 (disclosures in connection with primary offerings); Rule G-34 (CUSIP numbers, new issue, and market information requirements); and the Electronic Municipal Market Access ("EMMA<sup>®</sup>") system facility, to streamline the manner in which underwriters, in connection with new issues of municipal securities, satisfy certain of their submission requirements under Rule G-32. The proposed rule change was published for comment in the *Federal Register* on November 8, 2012.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The MSRB proposes to amend Rules G-32 and G-34 to streamline certain

<sup>17</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> "RTRS" refers to the Real-time Transaction Reporting System, which is an MSRB facility for collecting and disseminating information about transactions in municipal securities.

<sup>4</sup> Securities Exchange Act Release No. 68134 (November 1, 2012), 77 FR 67047 (SR-MSRB-2012-08) ("Notice").

<sup>5</sup> The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market. See Notice, *supra* note 3 at 58429.

<sup>6</sup> See Notice, *supra* note 3 at 58429.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.* at 58430. The Exchange also stated that any new strikes added under this proposal would be added in a manner consistent with the range limitations described in NYSE Amex Options Rule 903A.

<sup>10</sup> See *id.*

new issue submission requirements. Rules G-32 and G-34 set forth the reporting requirements for new issues of municipal securities. Rule G-32 requires underwriters to submit certain information<sup>5</sup> about new issues of municipal securities to the MSRB on or prior to the date of first execution by completing electronic Form G-32 through EMMA's Primary Market Disclosure Service.<sup>6</sup> Information submitted pursuant to Rule G-32 becomes available to the public on the EMMA Web site immediately upon submission and typically by the end of the date of first execution.<sup>7</sup> Rule G-34 requires underwriters for most new issues to submit comprehensive information<sup>8</sup> to the New Issue Information Dissemination Service ("NIIDS"), operated by the Depository Trust and Clearing Corporation ("DTCC"), no later than two hours after the Time of Formal Award.<sup>9</sup> DTCC disseminates this information to its subscribers upon submission by underwriters.<sup>10</sup> The information that underwriters must submit to NIIDS under Rule G-34 is generally more extensive than the information that underwriters must submit to EMMA

under Rule G-32 and includes many, but not all of, the same items.<sup>11</sup>

For any primary offering of municipal securities that is a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C), the MSRB proposes to require that the underwriter submit all information required under Rule G-32(b)(i)(A) at such times and in such manner as required under Rule G-34(a)(ii)(C). The submission of information per Rule G-34(a)(ii)(C) in a full and timely manner shall be deemed to be in compliance with the submission requirement of Rule G-32(b)(i)(A)(1).<sup>12</sup> In addition, the revised Rule G-32(b)(i)(A)(1)(a) would require that any items of information required to be included on Form G-32, but for which no corresponding data element is then available through NIIDS, be submitted to EMMA at the times and in the manner prescribed by Rule G-32(b)(vi) and set forth in the EMMA Dataport Manual.<sup>13</sup>

For any primary offering of municipal securities that is not a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C) or that is exempt from such submission requirement under Rule G-34(d), the underwriter will be required to initiate the submission of Form G-32 information on or prior to the date of first execution and complete the submission at such times and in such manner as required under Rule G-32(b)(vi) and set forth in the EMMA Dataport Manual.<sup>14</sup>

Rule G-34(a)(ii)(C) currently exempts certain types of short-term instruments from the NIIDS submission requirement. The MSRB is amending Rule G-34(a)(ii)(C) to remove exceptions for notes maturing in less than nine months, variable rate instruments, and auction rate products. Accordingly, underwriters for these types of issues will now be required to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information about new

issues.<sup>15</sup> The MSRB is retaining the exception for commercial paper, and underwriters will continue to be able to use other means to announce relevant new issue information promptly in a manner reasonably designed to reach market participants that may trade the new issue.<sup>16</sup>

Rule G-34(a)(ii)(C) currently requires underwriters to designate a Time of First Execution that is no less than two hours after all information has been transmitted to NIIDS. Because the hours counted in determining the responsibilities of an underwriter include only the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, in the event a dealer submits data to NIIDS to make an issue trade eligible between 3:00 p.m. and 5:00 p.m. on a trading day, the two-hour dissemination period carries through to the first hours of the following day. The MSRB proposes to amend Rule G-34(a)(ii)(C)(1)(b)(ii) to permit underwriters who submit information to NIIDS between 3:00 p.m. and 5:00 p.m. Eastern Time to designate a Time of First Execution as early as 9:00 a.m. Eastern Time on the next RTRS Business Day, regardless of whether two Business Hours have elapsed.<sup>17</sup> In addition, Rule G-34(a)(ii)(C)(1)(b)(ii) would permit underwriters for new issues of variable rate instruments with a planned settlement cycle of one day or less to designate a Time of First Execution any time after all information required by Rule G-34(a)(ii)(C) has been transmitted to NIIDS.<sup>18</sup>

The MSRB is also amending Rule G-8(a)(xiii)(C) to require underwriters to keep records of all documents, notices, and information required to be submitted under Rule G-32(b), but only to the extent that the information is not included in the information that is submitted through NIIDS in satisfaction of the requirements of Rule G-32(b) and properly maintained pursuant to Rule G-8(a)(xxiii). The proposed rule change also includes certain technical changes to Rule G-14 RTRS Procedures, Rule G-32, and Rule G-34.<sup>19</sup>

<sup>5</sup> This information includes, among other items, the issuer name and issue description for the new issue and, for each maturity of the new issue, the CUSIP numbers, principal amounts, and initial offering prices or yields.

<sup>6</sup> See MSRB Rule G-32(b)(vi)(C)(1). Rule G-32(d)(xi) defines "date of first execution" as "the date on which the underwriter executes its first transactions with a customer or another broker, dealer or municipal securities dealer in any security offered in a primary offering; provided that, for offerings subject to Rule G-34(a)(ii)(C), 'date of first execution' shall mean the date corresponding to the Time of First Execution as defined in Rule G-34(a)(ii)(C)(1)(b); further provided that, solely for purposes of this rule, the date of first execution shall be deemed to occur by no later than the closing date."

<sup>7</sup> See Notice, *supra* note 4, 77 FR at 67049.

<sup>8</sup> According to the MSRB, this information includes all of the information required for dealers to produce a "when, as and if issued" customer trade confirmation as well as many of the same items of information included in Form G-32. The term "when, as and if issued" refers to the time period in the life of a new issue of municipal securities from the original date of the sale by the issuer to the delivery of the securities to, and payment by, the underwriter. Sales made during the "when, as and if issued" period are subject to issuance of the securities. See Notice, *supra* note 4, 77 FR at 67048.

<sup>9</sup> The "Time of Formal Award" is defined in Rule G-34(a)(ii)(C)(1)(a) as "for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award."

<sup>10</sup> See Notice, *supra* note 4, 77 FR at 67048.

<sup>11</sup> See Notice, *supra* note 4, 77 FR at 67048-49. Submissions to NIIDS provide a mechanism for underwriters to communicate the Time of Formal Award and Time of First Execution to market participants that trade in the new issue. See *id.* at 67048. Rule G-34(a)(ii)(C)(1)(b) defines "Time of First Execution" as "the time the underwriter plans to execute its first transactions in the new issue."

<sup>12</sup> See MSRB Rule G-32(b)(i)(A)(1). The MSRB is also revising the EMMA facility to add to the EMMA display and the EMMA primary market subscription the Time of First Execution and the Time of Formal Award. See Notice, *supra* note 4, 77 FR at 67049.

<sup>13</sup> Any corrections to data submitted pursuant to Rule G-34(a)(ii)(C) must be made promptly and, to the extent feasible, in the manner originally submitted. See MSRB Rule G-32(b)(i)(A)(1)(b).

<sup>14</sup> See MSRB Rule G-32(b)(i)(A)(2).

<sup>15</sup> See Notice, *supra* note 4, 77 FR at 67050.

<sup>16</sup> See MSRB Rule G-34(a)(ii)(C)-(D).

<sup>17</sup> See MSRB Rule G-34(a)(ii)(C)(1)(b)(ii)(B). The MSRB is revising Rule G-34(a)(ii)(C)(2) to define "Business Hours" to "include only the hours from 9:00 a.m. to 5:00 p.m. Eastern Time on an RTRS Business Day." See MSRB Rule G-34(a)(ii)(C)(2)(a). "RTRS Business Day" shall have the meaning set forth in Rule G-14 RTRS Procedures section (d)(ii). See MSRB Rule G-34(a)(ii)(C)(2)(b).

<sup>18</sup> See Notice, *supra* note 4, 77 FR at 67049; and MSRB Rule G-34(a)(ii)(C)(1)(b)(ii)(A).

<sup>19</sup> The technical amendments to Rule G-14 RTRS Procedures clarify the types of securities that are not subject to the RTRS reporting requirement that

### III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change 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>20</sup> In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB'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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.<sup>21</sup>

The Commission believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market in municipal securities by reducing the submission burden on underwriters and improving data quality on EMMA and in the municipal securities marketplace. The proposed rule change revises Rule G-32 to provide that an underwriter's obligations to submit data about a new issue under Rule G-32 would be fulfilled by submitting that data through NIIDS as required pursuant to Rule G-34, while data elements not included in NIIDS and data for certain types of offerings not required to use NIIDS would continue to be subject to existing Rule G-32 data submission requirements. Allowing underwriters to submit information to NIIDS in satisfaction of certain EMMA submission requirements should help to streamline the submission process and accelerate the availability of Form G-32

transactions be reported within 15 minutes of the time of trade and remove language describing auction rate securities as having a short "effective maturity." The technical amendments to MSRB Rule G-32 include correcting a cross-reference to Rule 15c2-12 under the Act and a misnumbered paragraph containing the definition of the term "obligated person," as well as removing certain transitional provisions that were operational during the period between the former pre-EMMA submission process and the EMMA-based submission process.

<sup>20</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78o-4(b)(2)(C).

data on EMMA. In addition, the proposed rule change would require underwriters to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information about new issues of notes maturing in less than nine months, variable rate instruments, and auction rate products, which will provide market participants and the general public with enhanced access to primary market data for a broader scope of new issues of municipal securities.

The proposed rule change would permit underwriters of any issue that is made "trade eligible" between 3:00 p.m. and 5:00 p.m. Eastern Time to set a Time of First Execution for as early as 9:00 a.m. Eastern Time on the next RTRS Business Day without having to wait for the two Business Hour period to elapse. The Commission notes that dealers would still have sixteen hours between 5:00 p.m. Eastern Time and the earliest possible Time of Execution to integrate NIIDS data and prepare for the underwriter's announced Time of First Execution. The proposed rule change adds an exception from this requirement for variable rate instruments with a planned settlement cycle of one day or less. According to the MSRB, the two-hour advanced notification timeframe is not as important for these types of instruments as for other types of new issues. The Commission notes, however, that the requirement to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information would apply to these instruments.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, Section 15B(b)(2)(C)<sup>22</sup> of the Act. The proposal will become effective no later than May 6, 2013, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-MSRB-2012-08) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68458; File No. SR-NYSEArca-2012-139]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade First Trust Preferred Securities and Income ETF Under NYSE Arca Equities Rule 8.600

December 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 6, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 by the Exchange. 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 Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): First Trust Preferred Securities and Income ETF. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

<sup>24</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>22</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>23</sup> 15 U.S.C. 78s(b)(2).