

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57830; File No. SR-MSRB-2008-04]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, To Require Underwriter Registration and Testing With Depository Trust and Clearing Corporation's New Issue Information Dissemination System

May 16, 2008.

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 May 9, 2008, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the MSRB. 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 with the Commission a proposed rule change consisting of changes to Rule G-34, CUSIP Numbers and New Issue Requirements. The proposed rule change would require underwriters to register and conduct tests with the Depository Trust and Clearing Corporation's New Issue Information Dissemination System. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, 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 MSRB 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. The MSRB 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 proposed rule change would require underwriters to register and conduct tests with the Depository Trust and Clearing Corporation's ("DTCC") New Issue Information Dissemination System ("NIIDS"). The proposed rule change would help ensure that dealers are prepared for the September 30, 2008 effective date of changes to other MSRB rules to require underwriters to participate in NIIDS.<sup>3</sup> Accordingly, the proposed rule change would require all brokers, dealers and municipal securities dealers (collectively "dealers") that have acted as underwriter<sup>4</sup> in the last year on a new issue of municipal securities with nine months or greater effective maturity to register to use NIIDS with DTCC and successfully test NIIDS prior to September 15, 2008.<sup>5</sup> On an ongoing basis the proposed rule change would require dealers to register to use NIIDS with DTCC and successfully test NIIDS prior to acting as underwriter on a new issue of municipal securities with nine months or greater effective maturity.

##### DTCC NIIDS Implementation Plan

NIIDS is a centralized system for collecting and communicating new issue securities information. NIIDS will act as a central collection point for standardized electronic files of new issue information provided by underwriters that will be disseminated in real-time to information vendors. NIIDS is a component of a larger initiative at DTCC to implement an updated system for making new issues depository eligible ("UW SOURCE"). While NIIDS will provide an improved mechanism for disseminating the new issue information necessary for trade processing, information submitted into

NIIDS also will be used in UW SOURCE for making new issues depository eligible.

Beginning September 2, 2008, DTCC will require underwriters to use NIIDS in connection with the filing of an application for depository eligibility in UW SOURCE for new issues of municipal securities.<sup>6</sup> To allow underwriters to gain experience with UW SOURCE in advance of September 2, 2008, DTCC has made UW SOURCE available on an optional basis to allow all registered underwriters to test their ability to use UW SOURCE, including the NIIDS component. DTCC has developed educational training materials on UW SOURCE and NIIDS that are available on DTCC's Web site.

##### MSRB NIIDS Registration Requirement

Under the proposed rule change, all dealers that underwrite municipal securities with nine months or greater effective maturity would be required to register to use NIIDS with DTCC. Registration with DTCC is required in order for an underwriter to gain access to UW SOURCE to test NIIDS.

##### MSRB NIIDS Testing Requirement

Once an underwriter has completed DTCC NIIDS registration requirements, the underwriter is allowed to submit test data into NIIDS. DTCC has published a test plan that underwriters can use to gain familiarity with NIIDS. DTCC's UW SOURCE Testing and Implementation Plan is available on DTCC's Web site.

DTCC's UW SOURCE Testing and Implementation Plan includes the capability for underwriters to test the submission of information for several different types of securities. The proposed rule change only requires underwriters to test submitting information about securities with nine months or greater effective maturity since the changes to MSRB rules to require underwriter participation with NIIDS that become effective on September 30, 2008 provide an exception for short-term instruments with less than nine months in effective maturity.

Two methods of inputting new issue information into NIIDS are provided by DTCC: (i) NIIDS Web Interface and (ii) NIIDS "Autofeed" Interface. The NIIDS Web Interface allows underwriters to input information about a new issue using an Internet portal manually or by uploading a formatted Excel spreadsheet. The proposed rule change would require all underwriters to

<sup>3</sup> See Securities Exchange Act Release No. 57750 (May 1, 2008), 73 FR 25815 (May 7, 2008).

<sup>4</sup> Rule G-34 defines "underwriter" very broadly to include a dealer acting as a placement agent as well as any dealer purchasing new issue securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the "underwriter" for purposes of Rule G-34.

<sup>5</sup> Many underwriters have already registered with DTCC and initiated NIIDS testing. The proposed rule change would place a deadline on underwriters to register with DTCC and complete NIIDS testing. Underwriters that have already satisfied the requirements of the proposed rule change prior to SEC approval are not required to re-register or re-test.

<sup>6</sup> See Securities Exchange Act Release No. 57768 (May 2, 2008), 73 FR 26181 (May 8, 2008).

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

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

submit two test new issues using the NIIDS Web Interface.

The NIIDS Autofeed Interface allows underwriters to establish computer-to-computer connections with DTCC either directly or through a vendor to submit automated files directly to NIIDS. For underwriters planning to use the NIIDS Autofeed Interface, the proposed rule change would require underwriters to submit two test new issues using computer-to-computer connections.

DTCC will monitor underwriter testing and provide status updates to the MSRB. For purposes of determining whether an underwriter has successfully tested the NIIDS Web Interface or the NIIDS Autofeed Interface, underwriters must be able to submit a test new issue in NIIDS and achieve "Trade Eligibility" status in less than two hours. To assist in monitoring whether a test was successful, underwriters should enter a "Time of Formal Award" in NIIDS that reflects the time that the underwriter begins submitting data into NIIDS so that the Time of Formal Award can be compared with the time at which Trade Eligibility status is achieved.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,<sup>7</sup> 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, 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.

The MSRB believes that the proposed rule change is consistent with the Act because it will allow the municipal securities industry to produce more accurate trade reporting and transparency.

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

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

### *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 on the proposed rule change.

### **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 self-regulatory organization 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. 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-MSRB-2008-04 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2008-04. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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-MSRB-2008-04 and should be submitted on or before June 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57822; File No. SR-NASDAQ-2008-045]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Opening of Trading on the NASDAQ Options Market**

May 15, 2008.

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 May 13, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 substantially prepared by the Exchange. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(5) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

<sup>7</sup> 15 U.S.C. 78o-4(b)(2)(C).