and safe procedures for clearance and settlement.

The Commission finds that the approval of DTC's rule change for the transfer and combining of its TradeSuite Business with Thomson's ESG Business is consistent with these findings. As set forth above, the current processing system for the confirmation/affirmation of institutional securities transactions is showing signs of inadequacy as trading volumes continue to increase and needs to undergo major changes. By combining DTC's TradeSuite Business with Thomson ESG Business, a major step will be taken with respect to a more efficient and effective post-trade presettlement procession of institutional trades. Among other benefits, the combination should provide a means whereby a larger percentage of trades will be affirmed earlier in the settlement cycle which should allow broker-dealers and their institutional customers to identify and resolve exceptions and potential fails earlier. In addition, the combination of TradeSuite's and ESG's systems development expertise and other resources should facilitate the move to straight-through processing, a shorter settlement cycle, and improved management of rising trading volume.

The Commission also finds that the competition concerns raised by some commenters about the services of TradeSuite being provided through GJVMS are adequately addressed in the terms of the Commission's order granting GJVMS an exemption from clearing agency registration. Furthermore, DTC has represented that it shall not favor any single provider of Central Matching Services, including GJVMS, over any other Central Matching Services in terms of the quality and caliber of the interface to DTC's clearing agency or settlement functions, quality of connectivity, receipt of delivery and payment orders, speed or processing delivery and payment orders, capacity provided, or priority assigned in processing delivery and payment orders.[29]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–00–10) be and hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–9961 Filed 4–20–01; 8:45 am]

BILLING CODE 8010–01–M

[29] Letter amending DTC–00–10 from Richard B. Nesson, Managing Director and General Counsel, DTCC (February 20, 2001).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44181; File No. SR–MSRB–2001–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Providing Guidance on Specific Electronic Primary Offering and Trading Systems and Electronic Recordkeeping

April 16, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by MSRB. The SEC 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 consists of interpretations on the application of (i) rules G–32 and G–36 to new issues offerings through auction procedures; (ii) G–8, G–12 and G–14 to specific electronic trading systems; and (iii) rules G–8 and G–9 to electronic recordkeeping. The text of the proposed rule change is set forth below in *italics.*

Interpretation on the Application of Rules G–32 and G–36 to New Issue Offerings Through Auction Procedures

Traditionally, brokers, dealers and municipal securities dealers (''dealers'') have underwritten new issue municipal securities through syndicates in which one dealer serves as the managing underwriter. In some cases, a single dealer may serve as the sole underwriter for a new issue. Typically, these underwritings are effected on an ''all-or none'' basis, meaning that the underwriters bid on the entire new issue. In addition, new issues are occasionally sold to two or more underwriters that have not formed a syndicate but instead each underwriter has purchased a separate portion of the new issue (in effect, each underwriter serving as the sole underwriter for its respective portion of the new issue).

In the primary market in recent years, some issuers have issued their new offerings through an electronic ''auction'' process that permits the taking of bids from both dealers and investors directly. In some cases, these bids may be taken on other than an all-or-none basis, with bidders making separate bids on each maturity of a new issue. The issuer may engage a dealer as an auction agent to conduct the auction process on its behalf. In addition, to effectuate the transfer of the securities from the issuer to the winning bidders and for certain other purposes connected with the auction process, the issuer may engage a dealer to serve in the role of settlement agent or in some other intermediary role.

Although the Municipal Securities Rulemaking Board (the ''MSRB'') has not examined all forms that these auction agent, settlement agent or other intermediary roles (collectively referred to as ''dealer-intermediaries'') may take, it believes that in most cases such dealer-intermediary is effecting a transaction between the issuer and each of the winning bidders. The MSRB also believes that in many cases such dealer-intermediary may be acting as an underwriter, as such term is defined in Rule 15c2–12(f)(8) under the Securities Exchange Act of 1934, as amended (the ''Exchange Act'').[3] A dealer-intermediary that is effecting transactions in connection with such an auction process has certain obligations under rule G–32. If it is also an underwriter with respect to an offering, it has certain additional obligations under rules G–32 and G–36.

Application of Rule G–32, on Disclosures in Connection With New Issues

Rule G–32(a) generally requires that any dealer (i.e., not just the underwriter) selling municipal securities to a customer during the issue's underwriting period must deliver the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *Questions regarding whether an entity acting in an intermediary role is effecting a transaction or whether a dealer acting in such an intermediary role for a particular primary offering of municipal securities would constitute an underwriter should be addressed to staff of the Securities and Exchange Commission.*

official statement in final form, if any, to the customer by settlement of the transaction. Any dealer selling a new issue municipal security to another dealer is obligated under rule G–32(b) to send such official statement to the purchasing dealer within one business day of request. In addition, under rule G–32(c), the managing or sole underwriter for new issue municipal securities is obligated to send to any dealer purchasing such securities (regardless of whether the securities were purchased from such managing or sole underwriter or from another dealer), within one business day of request, one official statement plus one additional copy per $100,000 par value of the new issue municipal securities sold by such dealer to customers. Where multiple underwriters underwrite a new issue without forming an underwriting syndicate, each underwriter is considered a sole underwriter for purposes of rule G–32 and therefore each must undertake the official statement delivery obligation described in the preceding sentence.

If a dealer-intermediary is involved in an auction or similar process of primary offering of municipal securities in which all or a portion of the securities are sold directly to investors that have placed winning bids with the issuer, the dealer-intermediary is obligated under rule G–32(a) to deliver an official statement to such investors by settlement of their purchases. If all or a portion of the securities are sold to other dealers that have placed winning bids with the issuer, the dealer-intermediary is obligated under rule G–32(b) to send an official statement to such purchasing dealers within one business day of a request. Further, to the extent that the dealer-intermediary is an underwriter, such dealer-intermediary typically would have the obligations of a sole underwriter under rule G–32(c) to distribute the official statement to any other dealer that subsequently purchases the securities during the underwriting period and requests a copy. Any dealer that has placed a winning bid in a new issue auction would have the same distribution responsibility under rule G–32(c), to the extent that it is acting as an underwriter.

The MSRB views rule G–32 as permitting one or more dealer-intermediaries involved in an auction process to enter into an agreement with one or more other dealers that have purchased securities through a winning bid in which the parties agree that one such dealer (i.e., a dealer-intermediary or one of the winning bidders) will serve in the role of managing underwriter for purposes of rule G–32. In such a case, such single dealer (rather than all dealers individually) would have the responsibility for distribution of official statements to the marketplace typically undertaken by a managing or sole underwriter under rule G–32(c).[4] Such an agreement may be entered into by less than all dealers that have purchased securities through the auction process. All dealers that agree to delegate this duty to a single dealer may rely on such delegation to the same extent as if they had in fact formed an underwriting syndicate.

Application of Rule G–36, on Delivery of Official Statements, Advance Refunding Documents and Forms G–36(OS) and G–36(ARD) to the MSRB

Rule G–36 requires that the managing or sole underwriter for most primary offerings send the official statement and Form G–36(OS) to the MSRB within certain time frames set forth in the rule. In addition, if the new issue is an advance refunding and an advance refunding document has been prepared, the advance refunding document and Form G–36(ARD) also must be sent to the MSRB by the managing or sole underwriter. Where multiple underwriters underwrite an offering without forming an underwriting syndicate, the MSRB has stated that each underwriter would have the role of sole underwriter for purposes of rule G–36 and therefore each would have a separate obligation to send official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the MSRB.[5]

To the extent that the dealer-intermediary in an auction or similar process of primary offering of municipal securities is an underwriter for purposes of the Exchange Act, such dealer-intermediary would have obligations under rule G–36. If all or a portion of the securities are sold directly to investors that have placed winning bids with the issuer, the dealer-intermediary would be obligated to send the official statement and Form G–36(OS) (as well as any applicable advance refunding document and Form G–36(ARD)) to the MSRB with respect to the issue or portion thereof purchased by investors. If all or a portion of the securities are sold to other dealers that have placed winning bids with the issuer, the dealer-intermediary and each of the purchasing dealers (to the extent that they are underwriters for purposes of the Exchange Act) also typically would be separately obligated to send such documents to the MSRB with respect to the issue or portion thereof purchased by dealers.

To avoid duplicative filings under rule G–36, the MSRB believes that one or more dealer-intermediaries involved in an auction process may enter into an agreement with one or more other dealers that have purchased securities through a winning bid in which the parties agree that one such dealer (i.e., a dealer-intermediary or one of the winning bidders) will serve in the role of managing underwriter for purposes of rule G–36. In such a case, such single dealer (rather than all dealers individually) would have the responsibility for sending the official statement, advance refunding document and Forms G–36(OS) and G–36(ARD) to the MSRB.[6] *Such an agreement may be entered into by less than all dealers that have purchased securities. All dealers that agree to delegate this duty to a single dealer may rely on such delegation to the same extent as if they had in fact formed an underwriting syndicate.*

* * * * *

Interpretation on the Application of Rules G–8, G–12, and G–14 to Specific Electronic Trading Systems

The Municipal Securities Rulemaking Board (the ''MSRB'') understands that, over time, the advent of new trading systems will present novel situations in applying MSRB uniform practice rules. The MSRB is prepared to provide interpretative guidance in these situations as they arise, and, if necessary, implement formal rule interpretations or rule changes to provide clarity or prevent unintended results in novel situations. The MSRB has been asked to provide guidance on the application of certain of its rules to

[4] *Each dealer that is party to this agreement would be required to inform any dealer seeking copies of the official statement from such dealer under rule G–32(c) of the identity of the dealer that has by agreement undertaken this obligation or, in the alternative, may fulfill the request for official statements. In either case, the dealer would be required to act promptly so as either to permit the dealer undertaking the distribution obligation to fulfill its duty in a timely manner or to provide the official statement itself in the time required by the rule. Such agreement would not affect the obligated of a dealer that sells new issue securities to another dealer to provide a copy of the official statement to such dealer upon request as required under rule G–32(b), nor would it affect the obligation to deliver official statements to customers as required under rule G–32(a).*

[5] *See Rule G–36 Interpretive Letter—Multiple underwriters, MSRB interpretation of January 30, 1998, MSRB Rule Book (January 1, 2001) at 189.*

[6] *The dealer designated to act as managing underwriter for purposes of rule G–36 would be billed the full amount of any applicable underwriting assessment due under rule A–13, on underwriting and transaction assessments. Such dealer would be permitted, in turn, to bill each other dealer that is party to the agreement for its share of the assessment.*

transactions effected on a proposed electronic trading system with features similar to those described below.

Description of System

The system is an electronic trading system offering a variety of trading services and operated by an entity registered as a dealer under the Securities Exchange Act of 1934. The system is qualified as an alternative trading system under Regulation ATS. Trading in the system is limited to brokers, dealers and municipal securities dealers (''dealers''). Purchase and sale contracts are created in the system through various types of electronic communications via the system, including acceptance of priced offers, a bid-wanted process, and through negotiation by system participants with each other. System rules govern how the bid/offer process is conducted and otherwise govern how contracts are formed between buyers and sellers.

Participants are, or may be, anonymous during the bid/offer/negotiation process. After a sales contract is formed, the system immediately sends an electronic communication to the buyer and seller, noting the transaction details as well as the identity of the contra-party. The transaction is then sent by the buyer and seller to a registered securities clearing agency for comparison and is settled without involvement of the system operator.

The system operator does not take a position in the securities traded on the system, even for clearance purposes. Dealers trading on the system are required by system rules to clear and settle transactions directly with each other even though the parties do not know each other at the time the sale contract is formed. If a dealer using the system does not wish to do business with another specific contra-party using the system, it may direct the system operator to adjust the system so that contracts with that contra-party cannot be formed through the system.

Application of Certain Uniform Practice Rules to System

It appears to the MSRB that the dealer operating the system is effecting agency transactions for dealer clients.[7] The system operator does not have a role in clearing the transactions and is not taking principal positions in the securities being traded. However, the system operator is participating in the transactions at key points by providing anonymity to buyers and sellers during the formation of contracts and by setting system rules for the formation of contracts. Consequently, all MSRB rules generally applicable to inter-dealer transactions would apply except to the extent that such rules explicitly, or by context, are limited to principal transactions.

Automated Comparison

One issue raised by the description of the system above is the planned method of clearance and settlement. Rule G–12(f)(i) requires that inter-dealer transactions be compared in an automated comparison system operated by a clearing corporation registered with the Securities and Exchange Commission. The purpose of rule G–12(f)(i) is to facilitate clearance and settlement of inter-dealer transactions. In this case, the system operator: (i) Electronically communicates the transaction details to the buyer and seller; (ii) requires the buyer and seller to compare the transaction directly with each other in a registered securities clearing corporation; and (iii) is not otherwise involved in clearing or settling the transaction. The MSRB believes that under these circumstances, it is unnecessary for the system operator to obtain a separate comparison of its agency transactions with the buyer and seller.

Although automated comparison is not required between the system operator and the buyer and seller, the transaction details sent to each party by the system must conform to the information requirements for inter-dealer confirmations contained in rule G–12(c). Since system participants implicitly agree to receive this information in electronic form by participating in the system, a paper confirmation is not necessary. Also, the system operator may have an agreement with its participants that participants are not required to confirm the transactions back to the system operator, which normally would be required by rule G–12(c).

The system operator, which is subject to Regulation ATS, will be governed by the recordkeeping requirements of Regulation ATS for purposes of transaction records, including municipal securities transactions. However, the system operator also must comply with any applicable recordkeeping requirements in rule G–8(f), which relate to records specific to effecting municipal securities transactions. With respect to recordkeeping by dealers using the system, the specific procedures associated with this system require that transactions be recorded as principal transactions directly between buyer and seller, with notations of the fact that the transactions were effected through the system.

Transaction Reporting

Rule G–14 requires inter-dealer transactions to be reported to the MSRB for the purposes of price transparency, market surveillance and fee assessment. The mechanism for reporting inter-dealer transactions is through National Securities Clearing Corporation (''NSCC''). In the system described above, the buyer and seller clear and settle transactions directly as principals with each other, and without the involvement of the dealer operating the system. The buyer and seller therefore will report transactions directly to NSCC. No transaction or pricing information will be lost if the system operator does not report the transaction. Consequently, it is not necessary for the system operator separately to report the transactions tothe MSRB.

* * * * *

Interpretation on the Application of Rules G–8 and G–9 to Electronic Recordkeeping

The Municipal Securities Rulemaking Board (the ''MSRB'') has received requests for interpretive guidance regarding the maintenance in electronic form of records under rule G–8, on books and records, and rule G–9, on preservation of records. As the MSRB has previously noted, rules G–8 and G–9 provide flexibility to brokers, dealers and municipal securities dealers (''delears'') concerning the manner in which their records are to be maintained, recognizing that various recordkeeping systems could provide a complete and accurate record of a dealer's municipal securities activities.[8] Part of the reason for providing this flexibility was that a variety of enforcement agencies, including the Securities and Exchange Commission,

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[7] This situation can be contrasted with the typical broker's broker operation in which the broker's broker effects riskless principal transactions for dealer clients. The nature of the transactions as either agency or principal is governed for purposes of MSRB rules by whether a principal position is taken with respect to the security. ''Riskless principal'' transactions in this context are considered to be principal transactions in which a dealer has a firm order on one side at the time it executes a matching transaction on the contra-side. For purposes of the uniform practice rules, the MSRB considers broker's broker transactions to be riskless principal transactions even though the broker's broker may be acting for one party and may have agency or fiduciary obligations toward that party.

[8] See Rule G–8 Interpretation—Interpretive Notice on Recordkeeping, July 29, 1977, reprinted in MSRB Rule Book (January 1, 2001) at 42.

NASD Regulation, Inc. and the banking regulatory agencies, all may inspect dealer records.

Rule G–8(b) does not specify that a dealer is required to maintain its books and records in a specific manner so long as the information required to be shown by the rule is clearly and accurately reflected and provides an adequate basis for the audit of such information. Further, rule G–9(e) allows records to be retained electronically provided that the dealer has adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies.

The MSRB previously has recognized that efficiencies would be obtained by the replacement of paper files with electronic data bases and filing systems and stated that it generally allows records to be retained in that form.[9] *In noting that increased automation would likely lead to elimination of most physical records, the MSRB has stated that electronic trading tickets and automated customer account information satisfy the recordkeeping requirements of rule G–8 so long as such information is maintained in compliance with rule G–9(e). The MSRB believes that this position also applies with respect to the other recordkeeping requirements of rule G–8 so long as such information is maintained in compliance with rule G–9(e) and the appropriate enforcement agency is satisfied that such manner of record creation and retention provides an adequate basis for the audit of the information to be maintained. In particular, the MSRB believes that a dealer that meets the requirements of Rule 17a–4(f) under the Securities Exchange Act of 1934 with respect to maintenance and preservation of required books and records in the formats described therein would presumptively meet the requirements of rule G–9(e).*

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

In its filing with the SEC, 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 texts 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

In May 2000, the MSRB hosted a roundtable to begin a discussion about the use of electronic trading systems in municipal securities and the application of the MSRB's rules to existing and proposed electronic trading systems. During that roundtable, as well as during subsequent conservations with industry members, it appeared that there was significant confusion about the applicability of MSRB rules to brokers, dealers and municipal securities dealers (''dealers'') who operate such systems. In addition, questions were raised regarding the applicability of MSRB rules in the context of electronic auction procedures in the new issue market and the ability of dealers to make and maintain books and records in an electronic format. As an outgrowth of the roundtable and these industry inquiries, the MSRB determined to provide interpretive guidance relating to the application of (i) rules G–32 and G–36 to new issue offerings through auction procedures, (ii) rules G–8, G–12 and G–14 to specific electronic trading systems, and (iii) rules G–8 and G–9 to electronic recordkeeping.

In the interpretive guidance relating to the application of rules G–32 and G–36 to new issue offerings through auction procedures, the MSRB proposes to clarify that dealers serving as auction agent, settlement agent or other intermediary role in such auction sales of new issues by issuers have the same responsibilities relating to distribution of official statements and other documents as do dealers selling new issue municipal securities under rule G–32 and, in some circumstances, as underwriters under rules G–32 and G–36. The MSRB proposes to provide guidance on determining where the responsibilities would lie when multiple dealers participate in a primary offering without forming a syndicate.

In the interpretive guidance relating to the application of rules G–8, G–12 and G–14 to specific electronic trading systems, the MSRB proposes to provide guidance on the application of these rules to transactions effected on a proposed electronic trading system. The MSRB summarizes the relevant features of the proposed system and proposes guidance in connection with clearance and settlement under rule G–12, transaction reporting under rule G–14 and certain recordkeeping obligations under rule G–8.

In the interpretive guidance relating to the application of rules G–8 and G–9 to electronic recordkeeping, the MSRB proposes to provide guidance as to the creation and maintenance of books and records required under such rules in electronic format.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[10] which 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.

The MSRB believes that the proposed rule change is consistent with the Act because it provides guidance to dealers in complying with existing MSRB rules.

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 not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all dealers.

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

On September 28, 2000, the MSRB published a notice seeking comment on a draft interpretive guidance on dealer responsibilities in connection with both electronic and traditional municipal securities transactions (the ''Draft Guidance'').[11] The Draft Guidance presented the MSRB's views regarding certain compliance issues arising under rules G–8, G–9, G–12, G–14, G–32 and G–36.[12] The MSRB received seven

[9] *See Rule G–8 Interpretive Letters—Use of electronic signatures, MSRB interpretation of February 27, 1989, reprinted in MSRB Rule Book (January 1, 2001) at 47.*

[10] 15 U.S.C. 78o–4(b)(2)(C).

[11] ''Notice and Draft Interpretive Guidance on Dealer Responsibilities in Connection with Both Electronic and Traditional Municipal Securities Transactions,'' *MSRB Reports,* Vol. 20, No. 2 (November 2000) at 3. *See also* the clarification to the Draft Guidance published on November 17, 2000 at the MSRB's web site (*http://206.233.231.2/msrb/archive/etrading.htm*).

[12] The Draft Guidance also presented, in draft form, the MSRB's views regarding certain

letters commenting on the discussion of these rules set forth in the Draft Guidance.[13] After reviewing these comments, the MSRB approved the proposed rule change for filing with the SEC.[14]

As described above, the MSRB published draft interpretive guidance regarding the application of rules G–32 and G–36 to new issue offerings through auction procedures. Two commentators supported the MSRB's guidance on rules G–32 and G–36.[15] As a result, the MSRB has determined to file the proposed interpretative guidance with the SEC.

One commentator, however, mistakenly believed that the guidance provided for the delegation to the managing underwriter of the task of distributing official statements to customers, to which it is opposed.[16] The guidance does not provide for such delegation. This commentator suggested that the MSRB and rule G–32 to permit delivery to the customer of a preliminary official statement by settlement, with a final official statement to be sent as soon as possible thereafter. The MSRB has repeatedly emphasized the importance of ensuring that the customer receives the final official statement by settlement.[17] At the same time, the MSRB recognizes some of the inherent difficulties in meeting this obligation and has begun exploring possible approaches to ensuring more efficient and effective delivery of material information in the primary market in a timely manner.[18]

In addition, two commentators suggested that the MSRB endorse and support the use of electronic documents, including official statements.[19] One commentator noted that the MSRB has sought to encourage such use through its proposal on electronic filings under rule G–36.[20] In addition to this proposal, the MSRB has made clear that official statements may be delivered in electronic format for purposes of rule G–32 so long as certain requirements are met.[21] Further, as noted above, the MSRB has begun exploring possible approaches to improving the process of disseminating disclosure materials, including by means of electronic document delivery.

2. Comments on Application of Rules G–8, G–12 and G–14 to Specific Electronic Trading Systems

As discussed above, the MSRB published draft interpretive guidance regarding the application of rules G–8, G–12 and G–14 to a specific electronic trading system. One commentator stated that the MSRB's allocation of responsibilities set forth in the guidance relating to rules G–8, G–12 and G–14 as applied to such dealer-to-dealer electronic trading system is appropriate.[22] As a result, the MSRB has determined to file the proposed interpretative guidance with the SEC.

3. Comments on Application of Rules G–8 and G–9 to Electronic Recordkeeping

The MSRB did not seek comment on the creation and maintenance of dealer books and records in electronic format. However, three commentators suggested that the MSRB affirmatively state that electronic storage of required records satisfies the recordkeeping requirements of rules G–8 and G–9 and that dealers may contract with third parties to retain electronic records under rule G–9.[23] As a result, the MSRB has determined to file proposed interpretative guidance with the SEC regarding electronic recordkeeping under rules G–8 and G–9.

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

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing MSRB rule and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act,[24] and subparagraph (f) of Rule 19b–4 thereunder.[25] 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the SEC, and all written communications relating to the proposed rule change between the SEC and any person, other than those that may be withheld from the public in accordance with the provisions of 5

compliance issues arising under rules G–13, G–17, G–18 and G–19. The MSRB's draft guidance relating to these rules is not included in this proposed rule change.

[13] Letters to Carolyn Walsh, Assistant General Counsel, MSRB, from Ida W. Draim, Dickstein Shapiro Morin & Oshinsky LLP, dated October 25, 2000 (''Dickstein Shapiro Letter''); William L. Nichols, Chief Operating Officer, ValuBond Securities, Inc., dated November 30, 2000 (''ValuBond Letter''); and Bradley W. Wendt, President and Chief Operating Officer, and David L. Becker, General Counsel, MuniGroup.com LLC, dated December 1, 2000 (''MuniGroup Letter''); and letters to Ernesto A. Lanza, Associate General Counsel, MSRB, from Michael J. Marz, Vice Chairman, First Southwest Company, dated November 28, 2000 (''First Southwest Letter''); W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., dated November 30, 2000 (''Charles Schwab Letter''); Roger G. Hayes, Chair, and Aimee S. Brown, Vice Chair, The Bond Market Association Municipal E-Commerce Task Force, dated December 1, 2000 (''TBMA I Letter''); and LYnette Kelly Hotchkiss, Vice President and Associate General Counsel, The Bond Market Association, dated January 4, 2001 (''TBMA II Letter''). These letters also discussed, and MSRB received additional letters commenting on, other portions of the Draft Guidance.

[14] Comments received by the MSRB with respect to rules G–13, G–17, G–18 and G–19 will be addressed at a future date.

[15] *See* MuniGroup and TBMA I Letters. One commentator sought guidance as to the status of a specific website operator as an underwriter for purposes of rules G–32 and G–36. *See* Dickstein Shapiro Letter. As the MSRB noted in the Draft Guidance, a determination of whether a dealer would constitute an underwriter is based on an analysis of relevant Act provisions and such questions should be addressed to SEC staff. *See also* note 3 *supra.*

[16] *See* Charles Schwab Letter.

[17] *See, e.g.,* ''Official Statement Deliveries Under Rules G–32 and G–36 and Exchange Act Rule 15c2–12,'' *MSRB Reports,* Vol. 19, No. 3 (September 1999) at 29; Rule G–32 Interpretation—Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G–32, November 19, 1998, reprinted in *MSRB Rule Book* (January 1, 2001) at 160.

[18] *See* ''MSRB Discussion Paper on Disclosure in the Municipal Securities Market'' published on December 21, 2000 at the MSRB's web site (http://www.msrb.org/msrb1/whatsnew/DiscussionPaper.htm).

[19] *See* MuniGroup and ValuBond Letters.

[20] *See* TBMA II Letter, referring to ''Electronic Submission of Official Statements, Advance Refunding Documents and Forms G–36(OS) and G–36(ARD) to the MSRB,'' *MSRB Reports,* Vol. 20, No. 2 (November 2000) at 17.

[21] *See* Rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, reprinted in *MSRB Rule Book* (January 1, 2001) at 163.

[22] *See* MuniGroup Letter. Another commentator requested interpretive guidance on the application of MSRB rules to a different proposed electronic system, noting difficulties that such system would have in complying with certain provisions of rules G–12 and G–14. *See* Dickstein Shapiro Letter. The MSRB does not have sufficient information regarding this system to provide guidance at this time and will undertake further discussions of the relevant factors with this commentator.

[23] *See* First Southwest, MuniGroup and TBMA I Letters.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f).

U.S.C. 552, will be available for inspection and copying in the SEC's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2001–01 and should be submitted by May 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44179; File No. SR–NYSE–2001–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Expansion of the Maximum Share Size Parameter for Single Orders Entered Into the SuperDot System

April 13, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 30, 2001, the Exchange amended its proposal (''Amendment No. 1'') to provide a revised Exhibit 1 to the proposal.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of a further expansion of the maximum share size parameter for single orders entered into the SuperDot System (''SuperDot System'' or ''SuperDot'') originally proposed by the Exchange.[4]

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 Exchange 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 and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange's SuperDot System provides automated order routing and reporting services to facilitate the timely and effective transmission, execution, and reporting of market and limit orders on the Exchange. Pursuant to paragraph (a) of NYSE Rule 123B, ''Exchange Automated Order Routing Systems,'' members and member organizations may utilize the SuperDot System to transmit orders of such size as the Exchange may specify from time to time.

In the January Proposal, the Exchange amended the maximum share size parameters for single market and limit orders entered into the SuperDot System from 30,099 shares (for single market orders) and 99,999 shares (for single limit orders) to 500,000 shares initially, to be followed by an increase six months later to 1,000,000 shares.[5]

The purpose of this filing is to further amend the maximum share size parameter for single market and limit orders entered into the SuperDot System. The Exchange proposes to increase the maximum order size for both market and limit orders to 3,000,000 shares. The increase would become effective six months after the increase to 1,000,000 shares.

The Exchange believes that the proposed increase would provide many benefits to those that use the SuperDot System. The proposed amendment would facilitate openings and closings by increasing the number of shares that can be accommodated, especially in initial public offering situations. The proposed amendment would also eliminate the need for firms and institutions to break up large orders in order to make them SuperDot eligible, streamline the cancel and replace process, and reduce some of the paper from the floor, in support of the Exchange's goal of having a ''paperless'' floor. Further, the Exchange believes that the proposed increase would be compatible with the maximum share size capabilities of the Broker Booth Support System.[6] Moreover, this proposed rule change would help facilitate the electronic capture of orders required by NYSE Rule 123, ''Record of Orders.''[7]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) of the Act[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, 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.

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

The Exchange 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change, not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 35 days of the publication of this notice in the **Federal Register** or

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The revised Exhibit 1 indicates that the proposal is pursuant to Section 19(b)(2) of the Act rather than section 19(b)(3)(A) of the Act, as was indicated in the original Exhibit 1.

[4] In January 2001, a NYSE proposal to increase the maximum SuperDot share size parameter to 1,000,000 shares became effective. *See* Securities Exchange Act Release No. 43880 (January 23, 2001), 65 FR 8828 (February 2, 2001) (SR–NYSE–00–63) (''January Proposal''). In the January Proposal, the NYSE proposed to increase the maximum SuperDot share size parameter in two stages, with an initial increase to 500,000 shares, followed in six months by an increase to 1,000,000 shares.

[5] *See* January Proposal, *supra* note 4.

[6] The Broker Booth Support System is an order management system designed exclusively for NYSE members. The maximum share size capability for the Broker Booth Support System is 3,000,000 shares. Telephone conversation between John Lomnicky, Senior Project Specialist, Market Surveillance, NYSE, and Lisa Jones, Attorney, Division of Market Regulation, Commission (April 12, 2001).

[7] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (order approving File No. SR–NYSE–99–25).

[8] 15 U.S.C. 78f(b)(5).