

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

(1) Purpose

Dealers are increasingly offering online brokerage services to their retail customers. The Internet gives retail customers the tools to manage their own accounts and the ability to obtain access to investment information. Online trading offers many benefits to dealers and retail customers, but dealers must continue to fulfill their suitability obligations in the online environment whenever they recommend to a customer the purchase, sale or exchange of a municipal security.

The Online Suitability Notice states that the suitability rule (MSRB Rule G-19) remains fully applicable to online activities where a dealer recommends a municipal securities transaction to its customers. The Online Suitability Notice does not expand or create new obligations under the suitability rule, nor does it establish a "bright line" test for determining whether a particular communication constitutes a recommendation for purposes of the suitability rule. The MSRB instead articulates several broad principles that dealers can use in evaluating whether a particular online communication could fall within the definition of recommendation for purposes of the suitability rule. The Online Suitability Notice also provides guidance to members through the use of examples of communications that the MSRB believes fall within the definition of recommendation.

(2) Statutory Basis

The Board believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to 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 Board believes that dealers that make recommendations to customers in the online environment have an obligation to determine whether recommendations are suitable for such customers. The MSRB believes that this Online Suitability Notice is necessary to protect investors and the public interest with respect to online trading.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition 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 Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received.

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

The Online Suitability Notice is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(1) thereunder, in that it is a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-2002-11 and should be submitted by November 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46636; File No. SR-MSRB-2002-10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-14, on Reports of Sales or Purchases

October 10, 2002.

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 September 24, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-10) as described in Items I, II, and III below, which Items have been 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 has filed with the Commission a proposed rule change with regard to Rule G-14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change would not change the wording of Rule G-14.

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 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

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report, which has been provided to subscribers each day since January 2000. The report is made available each morning by 7 a.m. and includes details of transactions in municipal securities which were "frequently traded" the previous business day. From the beginning of the Transaction Reporting Program in 1994 through the spring of 2002, "frequently traded" securities were defined as those that were traded four or more times on a given business day. In May 2002, the Board defined "frequently traded" securities as those that were traded three or more times on a given day.³

When transparency was initially being introduced into the municipal securities market, the Board was concerned that an observer unfamiliar with the market might mistake an isolated reported transaction or pair of transactions as providing a reliable indicator of "market price." Because of this concern, the Board adopted the "frequently traded" threshold of four trades. At the same time, the Board has made a commitment to review the use of these reports as experience is obtained and eventually to move to transparency reporting on a more contemporaneous and comprehensive basis.⁴

Since 1994, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was

³ See Release No. 34-45861 (May 1, 2002) 67 FR 30989-30990.

⁴ See, e.g., "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Securities and Exchange Commission noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." See Release No. 34-34955 (November 9, 1994) 59 FR 59810.

a report, published the day after trading ("T+1"), that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began, as well, to publish individual transaction data on frequently traded securities. The Board has also introduced "comprehensive" transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than one week after trade date.⁵

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that information about a municipal security is to be disseminated in the T+1 Daily Transaction Report. The proposed rule change would lower the threshold from three to two trades per day.

Impact of Proposed Report on Transparency

The proposed threshold would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. On a typical day, there are approximately 26,000 transactions in about 10,000 issues, with a total par value traded of about \$9.5 billion. The present Daily Transaction Report, with a threshold of three or more trades per day, includes an average of 14,400 trades in 2,600 different issues, with a total par value of about \$5.2 billion. Under the proposed threshold, the report is expected to include an average of 19,760 trades in 5,600 issues, with a total par value of about \$7.7 billion. This represents a 37 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 48 percent increase in par value reported.⁶

Description of Service

The enhanced Daily Transaction Report with the two-trade threshold will replace the current report and will be made available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions will continue should the proposed Service be implemented. New subscriptions will be available free to parties who sign a

⁵ The first comprehensive report was introduced in October 2000 and listed all trades after a one-month delay. The latest comprehensive report began operation in August 2002 and has a one-week delay. See Release No. 34-46380 (August 19, 2002) 67 FR 54831-54832.

⁶ Data is based upon market activity from April 1, 2001 through July 31, 2001.

subscription agreement. In addition, recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

Implementation Schedule

The enhanced report will be available to subscribers as soon as practical after Commission approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

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 in that it applies equally to all dealers in municipal securities.

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

Written comments on the proposed rule change were not solicited, but the Board had earlier received a comment letter from The Bond Market Association ("TBMA") in reference to the August 2002 change to the comprehensive daily report, in which TBMA also commented on the Board's announced plan to lower the threshold to two trades.⁷ In its letter, TBMA expressed its continued support for the Board's steps to expand transparency in the municipal securities market. TBMA also stated its belief that T+1 dissemination of information on bonds that have traded at least twice a day "would provide useful information to investors and other market participants and is not likely to have a deleterious impact on the market for such bonds or mislead investors."⁸

TBMA did state a reservation regarding the method of counting trades toward the reporting threshold. TBMA believes that when a dealer "matches or crosses purchase and sale transactions," this constitutes a single trade because this is the economic reality of such

⁷ See letter from Frank Chin, Chair, Municipal Executive Committee, The Bond Market Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated August 8, 2002.

⁸ *Id.*, at 2.

transactions, regardless of whether dealers report two transactions to the MSRB.⁹

Consistent with the Board's previous decisions,¹⁰ the transaction reporting system will continue to treat two transactions that constitute "matched" or "crossed" transactions like other trades. In the general case, only the dealer that effects a purchase and subsequent sale could identify the two trades as crossed agency trades or matched riskless principal transactions. The transaction reporting system does not require dealers to match the two sides of agency trades nor specifically to match or identify riskless principal transactions. Therefore, it is not possible to count those trades differently in the current system for purposes of the T+1 reporting threshold.

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 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2002-10 and should be submitted by November 8, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46632; File No. SR-NASD-2002-96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Computer-to-Computer Interface Fees

October 9, 2002.

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 July 17, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On September 27, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Amendment No. 1 requested that the proposed rule change be considered filed pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders a proposed rule change effective upon filing with the Commission.⁶ 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

Nasdaq proposes to amend Rule 7010 to implement a retroactive reduction in the fees assessed on NASD members and non-members that used x.25 Computer-to-Computer Interface ("CTCI") lines after January 31, 2002. Nasdaq will implement the proposed rule change 30 days after the date of filing.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010. System Services

* * * * *

(f) Nasdaq Workstation™ Service

* * * * *

(3) The following charges shall apply for each CTCI subscriber*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	\$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	\$1600/month.

⁹ *Id.*
¹⁰ In 1994, a commentator made a similar suggestion with reference to the Board's filing that initiated the transaction reporting program. The commentator a brokers' broker, suggested that the Board should count as one transaction the situation in which a brokers' broker purchases securities from a dealer and sells them to another dealer. The Board noted in its reply that these are "riskless principal" transactions and that other dealers may also riskless principal transactions. The Board noted that its transaction reporting system would treat the sale to the intermediate dealer (e.g., the brokers' broker) and the intermediate dealer's

subsequent sale as two transactions, and that it would treat these trades like any other trades.
¹¹ 17 CFR 200.30-3(a)(12).
¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 27, 2002 ("Amendment No. 1"). The proposal was originally filed for notice and comment under Section 19(b)(2) of the Act. In Amendment No. 1, NASD revised its proposal to

stipulate that all subscribers would receive a credit of \$625 per month per .25 computer-to-computer circuit between February 1, 2002 and the date that circuits were terminated. Amendment No. 1 also clarified how the credits would be provided to subscribers.
⁴ 15 U.S.C. 78s(b)(3)(A).
⁵ 17 CFR 240.19b-4(f)(6).
⁶ For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 27, 2002, when Amendment No. 1 was filed.