SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45363; File No. SR–MSRB–2001–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Official Communications, Pursuant to MSRB Rules G–15 and G–8

January 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 19b–4 thereunder,[1] notice is hereby given that on November 6, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSRB–2001–08) (the ''proposed rule change'') 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 a proposed rule change consisting of an amendment to its rule G–15 on confirmation, clearance and settlement of transactions with customers and an amendment to its rule G–8 on books and records. The proposed rule change would require brokers, dealers and municipal securities dealers (collectively ''dealers'') that safekeep municipal securities to retransmit official documents about municipal securities issues to their safekeeping clients under certain conditions.

The text of the proposed rule change follows.[2]

Rule G–15. Confirmation, Clearance, [and] Settlement [of] and Other Uniform Practice Requirements with Respect to Transactions with Customers

(a) through (e) No change.

(f) *Reserved for future use*

(g) *Forwarding Official Communications*

(i) *If a broker, dealer or municipal securities dealer receives an official communication to beneficial owners applicable to an issue of municipal securities that the broker, dealer or municipal securities dealer has in safekeeping along with a request to forward such official communication to the applicable beneficial owners, the broker, dealer or municipal securities dealer shall use reasonable efforts to promptly retransmit the official communication to the parties for whom it is safekeeping the issue.*

(ii) *In determining whether reasonable efforts have been made to retransmit official communications, the following considerations are relevant:*

(A) CUSIP Numbers. If CUSIP numbers are included on or with the official communication to beneficial owners, the broker, dealer or municipal securities dealer shall use such CUSIP numbers in determining the issue(s) to which the official communication applies. If CUSIP numbers are not included on or with the official communication, the broker, dealer or municipal securities dealer shall use reasonable efforts to determine the issue(s) to which the official communication applies; provided however, that it shall not be a violation of this rule if, after reasonable efforts are made, the issue(s) to which the official communication applies are not correctly identified by the broker, dealer or municipal securities dealer.

(B) Compensation. A broker, dealer or municipal securities dealer shall not be required by this rule to retransmit official communications without an offer of adequate compensation. If compensation is explicitly offered in or with the official communication, the broker, dealer or municipal securities dealer shall effect the retransmission and seek compensation concurrently; provided, however, that if total compensation would be more than $500.00, the broker, dealer or municipal securities dealer may, in lieu of this procedure, promptly contact the party offering compensation, inform it of the amount of compensation required, obtain specific agreement on the amount of compensation and wait for receipt of such compensation prior to proceeding with the retransmission. In determining whether compensation is adequate, the broker, dealer or municipal securities dealer shall make reference to the suggested rates for similar document transmission services found in ''Suggested Rates of Reimbursement'' for expenses incurred in forwarding proxy material, annual reports, information statements and other material referenced in NASD Conduct Rule 2260(g), taking into account revisions or amendments to such suggested rates as may be made from time to time.

(C) Sufficient Copies of Official Communications. A broker, dealer or municipal securities dealer is not required to provide duplication services for official communications but may elect to do so. If sufficient copies of official communications are not received, and the broker, dealer or municipal securities dealer elects not to offer duplication services, the broker, dealer or municipal securities dealer shall promptly request from the party requesting the forwarding of the official communication the correct number of copies of the official communication.

(D) Non-Objecting Beneficial Owners. In lieu of retransmitting official communications to beneficial owners who have indicated in writing that they do not object to the disclosure of their names and security positions, a broker, dealer or municipal securities dealer may instead promptly provide a list of such non-objecting beneficial owners and their addresses.

(E) Beneficial Owners Residing Outside of the United States. A broker, dealer or municipal securities dealer shall not be required to send official communications to persons outside of the United States of America, although brokers, dealers and municipal securities dealers may voluntarily do so.

(F) Investment Advisors. A broker, dealer or municipal securities dealer shall send official communications to the investment advisor for a beneficial owner, rather than to the beneficial owner, when the broker, dealer or municipal securities dealer has on file a written authorization for such documents to be sent to the investment advisor in lieu of the beneficial owner.

(iii) Definitions

(A) The terms ''official communication to beneficial owners'' and ''official communication,'' as used in this section (g), mean any document or collection of documents pertaining to a specific issue or issues of municipal securities that both:

(1) Is addressed to beneficial owners and was prepared or authorized by: (a) An issuer of municipal securities; (b) a trustee for an issue of municipal securities in its capacity as trustee; (c) a state or federal tax authority; or (d) a custody agent for a stripped coupon municipal securities program in its capacity as custody agent; and

(2) contains official information about such issue or issues including, but not limited to, notices concerning monetary or technical defaults, financial reports, material event notices, information statements, or status or review of status as to taxability.

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

[2] Italics indicates additions; brackets denote deletions.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) *Description of Books and Records Required to be Made.*

(i) through (x) No change.

(xi) Customer Account Information. A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A) through (K) No change.

(L) with respect to official communications, customer's written authorization, if any, that the customer does not object to the disclosure of its name, security position(s) and contact information to a party identified in G–15(g)(iii)(A)(1) for purposes of transmitting official communications under G–15(g).

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

Certain parties, such as municipal issuers, may need to transmit an official document relating to an issue of municipal securities to the owners of the issue, the ''beneficial owners.'' In attempting to distribute such documents to beneficial owners, the party requesting official communications retransmission may send the documents to the holders registered with the transfer agent, or to a list of depository participants holding positions in the issue. Substantial numbers of municipal securities investors, however, do not hold positions via the records of the transfer agent or with a depository, but rather own the securities through a safekeeping agent such as a dealer. In this case, for the beneficial owners to receive the document, it is necessary for the party seeking to send such a document to ask the safekeeping agent to retransmit the document to its safekeeping clients who own the issue.

The proposed rule change includes an amendment to rule G–15 on confirmation, clearance and settlement of transactions with customers that, as described below, would require dealers who serve as safekeeping agents to undertake ''reasonable efforts'' to retransmit ''official communications'' to their safekeeping clients when requested to do so. That amendment also allows dealers in certain circumstances to send to the party requesting an official communication retransmission a list of beneficial owners who do not object to the disclosure of their name, contact information and security positions (''non-objecting beneficial owners'') in lieu of retransmitting documents. The proposed rule change also includes an amendment to rule G–8 on books and records to be made by brokers, dealers and municipal securities dealers that would require dealers to retain as an official record a customer's written authorization, if any, as to the customer's status as a non-objecting beneficial owner.

The MSRB realizes that some dealers today retransmit documents to their customers voluntarily, or under specific terms of their safekeeping agreements, and in many cases do so without compensation from the party requesting retransmission. It is not the intent of the proposed rule change to discourage retransmissions of official communications in these cases. Rather, the purpose of the proposed rule change is to help ensure that parties needing to transmit official communications to beneficial owners would be able to depend on dealers undertaking reasonable efforts, under the explicit terms of the rule G–15 amendment, to retransmit such official communications to the parties for whom those dealers safekeep municipal securities.

(a) Official Communications

The proposed rule change defines an ''official communication'' as a document or collection of documents addressed to beneficial owners that was prepared or authorized by an issuer of municipal securities, a trustee for an issue of municipal securities, a state or federal tax authority or a custody agent for a stripped coupon municipal securities program in its capacity as custody agent. These official communications may include notices of technical default or default as to payment of interest or principal, requests for votes by bondholders, update memoranda from the trustee of a defaulted issue, as well as other official communications to owners of municipal securities that are not in default.

(b) Reasonable Efforts.

The rule G–15 amendment addresses six topics to help clarify what would constitute ''reasonable efforts'' to be made by a dealer in retransmitting an official communication in specific situations. These provisions are discussed below.

Compensation. The rule G–15 amendment would require dealers to retransmit official communications only if compensation is offered. This is the same principle used in the regulations governing retransmission of notices of proxy and other material in NASD Conduct Rule 2260 on Forwarding of Proxy and Other Materials. Since the types of communications a dealer may receive and the amount of work a dealer may have to perform to retransmit notices probably will vary greatly from case to case, there is no attempt in the rule G–15 amendment to specify exactly what adequate compensation would be in each possible case. However, to give some guidance on this issue, the rule G–15 amendment references the rates of compensation for transmittal of documents detailed in NASD interpretation IM–2260, on Suggested Rates of Reimbursement, relating to forwarding of proxy and other materials.[3] Dealers may reference this interpretation in determining reasonable clerical expenses and other expenses incurred in retransmitting an official communication.

The rule G–15 amendment also includes a ''compensation threshold.'' It states that, for retransmission where the total compensation sought will be less than $500, the dealer should begin retransmitting immediately and ask for the calculated compensation concurrently. For retransmission where compensation sought will be greater than $500, the dealer either follows the general rule, or may instead promptly contact the party offering compensation, inform it of the amount of compensation required, obtain specific agreement on the amount of compensation and wait for receipt of such compensation prior to proceeding with the retransmission.

CUSIP numbers. An official communication may relate to many different issues of municipal securities and it may be unclear from the document exactly which issues are involved. If CUSIP numbers are included with the document, the dealer can use these issue identifiers to determine which of its safekeeping clients should receive the document. However, official communications may in some cases be disseminated without CUSIP numbers and, in these cases, it

[3] *NASD Manual* (CCH) ¶ 4233.

may be difficult to determine exactly which CUSIP numbers are involved. The rule G–15 amendment states that, if CUSIP numbers are not included with the document, the dealer must use reasonable efforts to determine the CUSIP numbers, so that the appropriate safekeeping clients can be identified. However, if these efforts do not result in a correct identification of CUSIP numbers, the failure to retransmit to those safekeeping clients who were not identified would not be considered a violation of the rule.

Sufficient copies of official communications. The rule G–15 amendment would not require dealers to provide duplication services for official communications. If a dealer does not receive enough copies of official communications for the investors for whom it safekeeps securities, the dealer may elect to provide duplication services or else must request the sufficient number of copies from the party requesting the official communications retransmission.

Non-objecting beneficial owners. A non-objecting beneficial owner is a beneficial owner of municipal securities that does not object to the disclosure of its name, contact information and security positions and that has provided this notice to the dealer in writing. For safekeeping clients who are non-objecting beneficial owners, a dealer would have the option of sending to the party requesting an official communication retransmission a list of non-objecting beneficial owners along with these owners' contact information in lieu of retransmitting documents. The rule G–15 amendment requires that dealers obtain an investor's non-objecting status in writing. The proposed rule change's amendment to rule G–8 would require that such record be kept for a period of at least six years following the closing of an account.

Beneficial owners residing outside of the United States. The rule G–15 amendment would not require dealers to retransmit official communications to investors residing outside of the United States.

Investment advisors. Some investors designate investment advisors to act on their behalf in submission of orders and other investment-related decisions. In these cases, it would be important for the investment advisor to receive the official communication. Consequently, the rule G–15 amendment states that dealers shall send official communications to the investment advisor for a beneficial owner, rather than to the beneficial owner, when the dealer has on file a written authorization for such documents to be sent to the investment advisor in lieu of the beneficial owner.

2. Basis

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

> * * * be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade * * * and to protect investors and the public interest . * * *

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 Exchange Act since it applies equally to all dealers in municipal securities.

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

On March 28, 2001, the MSRB published a notice seeking comment on an exposure draft of the proposed rule change (''March 2001 draft amendment'')[4], the terms of which substantially were the same as the proposed rule change, with the following exceptions:

- The March 2001 draft amendment did not include within the definition of ''official communication': (i) A state or federal tax authority sending an official communication to beneficial owners; or (ii) a custody agent forwarding official communications to the owners of custodial receipts.
- The March 2001 draft amendment did not specify that dealers should send official communications to investment advisors when a dealer has on file a written authorization for such documents to be sent to the investment advisor in lieu of the beneficial owner.
- The March 2001 draft amendment stated that, if the total compensation would be greater than $500, then the dealer *must* contact the party offering compensation and seek agreement on the amount required prior to forwarding the official communication. The proposed rule change states that, in this case, the dealer *may* undertake this alternative course of action.

The MSRB received comments on the March 2001 draft amendment from the following five commentators: American Bankers Association (''ABA''); Association for Investment Management and Research (''AIMR''); Bankers Trust; Regional Municipal Operations Association (''RMOA''); and The Bond Market Association (''TBMA'').

A majority of the commentators offered general support for the March 2001 draft amendment. The TBMA ''fully supports the laudable goal of the Board in promoting timely communications and increased information to bondholders.'' The AIMR stated ''the types of information included within the definition of official communications are just the types of material information that investors need in order to manage their accounts in an informed and responsible manner.'' The RMOA stated that the municipal securities ''industry has the infrastructure in place to support this initiative.''

One commentator, the ABA, expressed dissatisfaction with the language of March 2001 draft amendment in that it referred specifically to corporate trustees in the compensation section. The ABA, which represents corporate trustees, was particularly concerned that the language of the March 2001 draft amendment left an impression that the MSRB may take the position that trustees are legally responsible for sending documents and compensating dealers for retransmission of those documents. It was not the intent of the MSRB to opine on this issue; thus technical changes were made in the language of the proposed rule change to delete the specific reference to trustees.

Timing of dissemination. In a typical case involving book-entry securities,[5] an issuer or trustee attempting to reach beneficial owners must first send a formal request to the Depository Trust Company (''DTC'') for a list of participants holding positions in the issue. DTC then processes the request and sends back a list of its ''participants'' that hold DTC positions in the issue.[6] Once it knows the DTC participants involved, the issuer or trustee sends the relevant documents to those parties. In some cases, the DTC participant will be the beneficial owner. It is more likely that the DTC participant is merely holding a position on behalf of one or more safekeeping clients. In

[4] ''Official Communications,'' *MSRB Reports*, Vol. 21, No. 1 (May 2001) at 17.
Communications,'' MSRB Reports, Vol. 21, No. 1 (May 2001) at 17.

[5] The great majority of municipal securities are held by book-entry. The MSRB is not aware of any document retransmission problems when beneficial owners are directly registered with the issue's registrar.

[6] DTC ''participants'' are the largest banks and securities firms in the United States. There are only approximately 550 DTC participants. As noted below, many dealers are not direct participants, but rather use DTC indirectly through other banks or securities firms.

this case, if the notice is to reach beneficial owners, the DTC participant must identify those clients and retransmit the documents to them. In some cases, there are multiple nominees between DTC and the ultimate beneficial owner. For example, a dealer that safekeeps securities for customers may do so through a DTC participant bank.

Even under the best of circumstances, an official communication may take a week or more to reach beneficial owners. Bankers Trust stated its concern over potential delays in the timing of dissemination of documents under the procedure outlined in the March 2001 draft amendment. The MSRB notes, however, that the proposed rule change is not intended to be a mechanism for dissemination of time-critical material information to market participants, but rather addresses the problem of how the specific owners of an issue can be identified and communicated with, for example, under the terms of a trust indenture when a vote of securities holders is being held. The MSRB believes it is important to acknowledge that retransmitting paper documents through a chain of nominees and other custodians cannot possibly provide information to beneficial owners as quickly as the information in those documents will reach the market from other sources such as information vendors, NRMSIRs, the issuer's web site, etc. The MSRB believes that if each nominee acts promptly when it is its turn to act, official communications normally should reach beneficial owners in a week or two and this normally will be sufficient time for a vote of bondholders or other purposes that require the issuer (or trustee if it chooses to do so) to communicate directly with bondholders.

Compensation. As noted above, the March 2001 draft amendment included a compensation provision noting that, if total compensation would be more than $500.00, the dealer must contact the sender and inform it of the amount of compensation required and obtain specific agreement on the amount of compensation prior to retransmitting the official communication and may wait for receipt of such compensation prior to proceeding. Bankers Trust stated that the March 2001 draft amendment ''allows for delays in forwarding official communications to beneficial owners while the dealer seeks compensation from the issuer or trustee.'' The MSRB realizes that the requirement to seek compensation for retransmissions costing in excess of $500 prior to passing on documents could cause unnecessary delays in retransmitting official communications since some dealers may feel comfortable that an issuer will follow through on their offer of compensation, even prior to obtaining a specific agreement to pay such an amount. The RMOA, for example, stated ''in most cases compensation would take a back seat to [their] strong commitment to an informed customer.''

The MSRB decided to change the compensation threshold so that it would be an optional course of action for the dealer rather than a requirement. The revised compensation provision would permit those dealers who would like to retransmit official communications as promptly as possible, even without assurance that compensation will be provided, to do so without having to wait for receipt of agreement or funds from the party offering compensation. However, for dealers that wish to be assured that compensation would be provided on retransmissions costing in excess of $500, the option is left for the dealer to seek specific agreement with the party offering compensation and to receive funds prior to retransmitting documents.

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 forgoing, including whether the rule proposal change is consistent with the Exchange 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–2001–08 and should be submitted by March 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3044 Filed 2–7–02; 8:45 am]

BILLING CODE 8010–01–U

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9O41]

State of Maine

Penobscot County and the contiguous counties of Aroostook, Hancock, Piscataquis, Somerset, Waldo and Washington in the State of Maine constitute an economic injury disaster loan area as a result of fires that occurred on January 17 and 20, 2002. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on October 31, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9O4100 for Maine.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: January 31, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–3061 Filed 2–7–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Council; Public Meeting

The U.S. Small Business Administration Wisconsin District Advisory Council will hold a public