

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, that the rules of a national securities exchange 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 and a national market system and, in general, to protect investors and the public interest.<sup>21</sup>

The new COA functionality will provide an electronic auction for eligible complex orders. Under the COA auction process, Market Makers with an appointment in the relevant options class and members acting as agent for orders resting at the top of the COB in the relevant options series will be able to submit RFR Responses. At the conclusion of the COA auction, the auctioned order will execute against the interest available in the EBook, the COB, and/or RFR Responses submitted during the COA.<sup>22</sup> By providing an electronic auction for eligible complex orders, the Commission believes that the COA process could facilitate the execution of eligible complex orders and provide them with an opportunity for price improvement.

The Commission notes that the CBOE's rules provide that a pattern or practice of submitting orders that cause a COA to conclude early will be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1,<sup>23</sup> and that the dissemination of information regarding COA-eligible orders to third parties will be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 and other CBOE rules.<sup>24</sup> These provisions will require the CBOE to surveil for, and should help to deter, potential abuses of the COA process.

In addition, the Commission notes that the COA system cannot be used to trade a COA-eligible order against a

facilitated or solicited order. COA-eligible orders, like other orders on the Hybrid System, will be subject to CBOE Rule 6.45A, Interpretation and Policies .01 and .02, and CBOE Rule 6.45B, Interpretation and Policies .01 and .02. Accordingly, a CBOE member seeking to trade with its customer's COA-eligible order would be required to comply with Interpretation and Policy .01 of CBOE Rule 6.45A or 6.45B, as applicable, and a CBOE member seeking to cross its customer's COA-eligible order with a solicited order would be required to comply with Interpretation and Policy .02 of CBOE Rule 6.45A or 6.45B, as applicable.

The Commission believes that the changes to the COB should facilitate the execution of complex orders. In this regard, the proposal revises CBOE Rule 6.53C(c) to provide that quotes in the EBook, as well as orders in the EBook, may execute against a complex order in the COB, and that market participants, as defined in CBOE Rule 6.45A or 6.45B, as applicable, may submit quotes, as well as orders, to trade against orders in the COB. In addition, the proposal revises CBOE Rule 6.53C(c) to allow complex orders routed to or resting in the COB to be expressed and executed in one-cent increments, thereby providing additional price points at which complex orders could be executed.<sup>25</sup> The proposal also clarifies the operation of the COB by providing that complex orders in the COB will be allocated pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs,<sup>26</sup> and that complex orders will be allocated among market participants pursuant to CBOE Rule 6.45A or 6.45B, as applicable.<sup>27</sup>

The CBOE proposes to revise CBOE Rule 6.42(3) to allow the legs of a complex order to be executed in one-cent increments, which, according to the CBOE, will allow members to execute complex order transactions more easily. Accordingly, the Commission believes that this change could facilitate the execution of complex orders. The Commission notes that CBOE Rule 6.42(3) will continue to require complex orders to be expressed in multiples of the minimum increment to be entitled to priority under CBOE Rule 6.45.

<sup>25</sup> The appropriate CBOE committee will determine, on a class-by-class basis, whether complex orders routed to or resting in the COB may be expressed in a multiple of the minimum increment or in one-cent increments. See CBOE Rule 6.53C(c)(ii).

<sup>26</sup> See CBOE Rule 6.53C(c)(ii)(2).

<sup>27</sup> See CBOE Rule 6.53C(c)(ii)(3).

CBOE Rule 6.42(3) currently requires bids and offers in complex orders in S&P 500 Index options, other than box spreads, to be expressed in increments no smaller than \$0.05. The CBOE proposes to apply this provision to S&P 100 Index options. The Commission believes that this change is consistent with the Act because of the similarities between the S&P 500 Index and the S&P 100 Index.

Finally, the Commission believes that the proposal to revise CBOE Rules 6.45, 6.45A, 6.45B, 6.9, and 7.4 to include the complex orders defined in CBOE Rule 6.53C is consistent with the Act because it should provide consistent treatment for different types of complex orders under the CBOE's rules.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-CBOE-2005-65), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

J. Lynn Taylor,

Assistant Secretary.

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BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54141; File No. SR-MSRB-2006-05]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 53 Examination Program

July 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 27, 2006, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> See notes 10-12, *supra*, and accompanying text. The Commission notes that, at the same price, public customer orders in the COB and public customer RFR Responses will trade against a COA-eligible order before non-public customer orders in the COB and non-public customer RFR Responses. See CBOE Rule 6.53C(d)(v)(2)-(4).

<sup>23</sup> See CBOE Rule 6.53C, Interpretation and Policy .04.

<sup>24</sup> See CBOE Rule 6.53C, Interpretation and Policy .05.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

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

organization pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The MSRB is filing with the Commission revisions to the study outline and selection specifications for the Municipal Securities Principal Qualification Examination (Series 53) program.<sup>5</sup> The proposed revisions update the material to reflect changes to the rules and regulations covered in the examination, as well as modify the content of the examination program to track more closely the job responsibilities of a municipal securities principal. The MSRB is not proposing any textual changes to the rules of the MSRB.

The revised study outline is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room. The MSRB has omitted the Series 53 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b-2 under the Act.<sup>6</sup>

### **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**

Section 15B(b)(2)(A) of the Act<sup>7</sup> authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. The MSRB has developed examinations that are designed to establish that persons associated with brokers, dealers and municipal securities dealers that effect transactions in municipal securities have attained specified levels of competence and knowledge. The MSRB periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

MSRB Rule G-3(b) states that a municipal securities principal has responsibility to oversee the municipal securities activities of a broker, dealer or municipal securities dealer. In this capacity, a municipal securities principal manages, directs or supervises one or more of the following activities associated with the conduct of municipal securities business: Underwriting; trading; buying or selling municipal securities to or from customers; rendering financial advisory or consultant services to issuers of municipal securities; communications to customers about any municipal securities activities; processing, clearing, and (in the case of securities firms) safekeeping of municipal securities; and training of principals and representatives. The only examination that qualifies a municipal securities principal is the Municipal Securities Principal Qualification Examination (Series 53).

A committee of industry members and MSRB staff recently completed a review of the job requirements for a municipal securities principal and the Series 53 examination program. As a result of this review, the MSRB is updating the content of the examination to cover certain rules or provisions of rules that were promulgated since the last revision of the outline. Areas added to the study outline include:

- Definition of municipal fund security.
- Qualification and numerical requirements for municipal fund securities limited principals.

- Records concerning compliance with Rule G-20, on gifts, gratuities and non-cash compensation.
- SEC requirements for retention of information on associated persons.
- New Rule G-38, on solicitation of municipal securities business.
- Requirements regarding municipal fund securities advertisements.
- Remarketing activities under Rule G-23, on activities of financial advisors.
- Definitions regarding the Real-Time Transaction Reporting System.
- Minimum denominations.
- Forwarding official communications.

The MSRB has deleted from the study outline rules or rule provisions that are obsolete or do not have direct impact on the daily work of a municipal securities principal. These deletions include:

- Rule G-35, on arbitration.
- Requirements regarding the retaking of qualification examinations and the waiver of qualification requirements.
- Old Rule G-38, on consultants.
- References to the scope and notice of Rule G-12(a).
- SEC requirements regarding lost and stolen securities.

Technical changes have been made to correct the citations for various rules that have been amended. In addition, as part of an ongoing effort to align the examination more closely to the supervisory duties of a municipal securities principal, the MSRB is modifying the content of the examination to track the functional workflow of a municipal securities principal.

As a result of the revisions noted above, the MSRB is modifying the number of questions on each section of the Series 53 study outline as follows: Part One—Federal Regulations, four questions; Part Two—General Supervision, 21 questions; Part Three—Sales Supervision, 29 questions; Part Four—Origination and Syndication, 22 questions; and Part Six—Operations, 16 questions. Coverage on Part Five—Trading remains unchanged with eight questions. The revised examination continues to cover areas of knowledge required for effective supervision of municipal securities activities.

The MSRB is proposing these changes to the entire content of the Series 53 examination, including the selection specifications and question bank. The number of questions on the Series 53 examination will remain at 100, and candidates will continue to be allowed three and one-half hours for each testing session. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions in order to receive a passing grade.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> The MSRB is also proposing corresponding revisions to the Series 53 question bank, but based upon instructions from the Commission staff, the MSRB is submitting SR-MSRB-2006-05 for immediate effectiveness pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b-4(f)(1) thereunder, and is not filing the question bank for Commission review. See letter to Diane G. Klinke, General Counsel, MSRB, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

<sup>6</sup> 17 CFR 240.24b-2.

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

## 2. Statutory Basis

The MSRB believes that the proposed revisions to the Series 53 examination program are consistent with the provisions of Section 15B(b)(2)(A) of the Act,<sup>8</sup> which authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by 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 that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and Rule 19b-4(f)(1) thereunder,<sup>10</sup> in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. MSRB proposes to implement the revised Series 53 examination program on August 1, 2006. At any time within 60 days of the filing of the 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.<sup>11</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2006-05 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-MSRB-2006-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2006-05 and should be submitted on or before August 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54155; File No. SR-NASDAQ-2006-001]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto Relating to the Nasdaq Market Center

July 14, 2006.

## I. Introduction

On February 7, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to integrate the operations of the existing Nasdaq Market Center, along with Nasdaq's Brut and INET facilities. On March 29, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change ("Amendment No. 1"). The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on April 14, 2006.<sup>3</sup> The Commission received twelve comments regarding the proposal.<sup>4</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 ("Single Book Proposal").

<sup>4</sup> See letter from Kim Bang, Chief Executive Officer, Bloomberg Tradebook LLC ("Bloomberg") ("Kim Bang") to Brian G. Cartwright, General Counsel, Commission, dated March 6, 2006 ("Bloomberg Comment Letter I"); letter from Kim Bang, David Cummings, Chief Executive Officer, BATS Trading, Inc. ("BATS") ("David Cummings"), Ronald Pasternak, President, Direct Edge ECN LLC, and Martin Kaye, Chief Executive Officer, Track ECN ("Track") ("Martin Kaye") to Robert L.D. Colby, Acting Director, Division of Market Regulation ("Davison"), Commission, dated March 21, 2006 ("ECN Comment Letter"); letter from Kim Bang to Jonathan G. Katz, Secretary, Commission ("Jonathan Katz"), dated May 5, 2006 ("Bloomberg Comment Letter II"); letter from David Cummings to Christopher Cox, Chairman, Commission ("Chairman Cox"), dated May 5, 2006 ("BATS Comment Letter"); letter from Martin Kaye to Chairman Cox, dated May 5, 2006 ("Track Comment Letter I"); letter from Leonard J. Amoroso, Senior Managing Director and Chief Compliance Officer, Knight Capital Group, Inc. ("Knight") to Nancy M. Morris, Secretary, Commission ("Nancy Morris"), dated May 5, 2006 ("Knight Comment Letter"); letter from C. Thomas Richardson, Managing Director, Citigroup Global Markets Inc. ("Citigroup") to Nancy Morris, dated May 17, 2006 ("Citigroup Comment Letter"); letter from Kim Bang to Nancy Morris, dated May 30, 2006 ("Bloomberg Comment Letter II"); letter from David C. Chavern, Vice President, Capital Markets Program, U.S.

Continued

<sup>8</sup> 15 U.S.C. 78o-4(b)(2)(A).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

<sup>11</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>12</sup> 17 CFR 200.30-3(a)(12).