Currently, some specialists have only turned on the Exchange Super Max program without enabling the SuperMax program.

Under the new simplified algorithm for Enhanced SuperMax, small agency market orders [7] would be eligible for price improvement if the market for the security is quoted with a spread of 3/16 of a point (rather than the 1/4 point spread that is required under the existing rule). In addition, the double-up/double down concept currently in place to determine whether an order is stopped has been eliminated. The simplified algorithm will now ''stop'' an eligible order at the ITS BBO if an execution at the ITS BBO would be at least 1/8 point higher than (for a buy order) or lower than (for a sell order) the last primary market sale. (This stopping algorithm is identical to the new algorithm above for SuperMax.) Once stopped, an order would receive 1/16 price improvement over the stopped price if the next primary market sale occurs before the end of the Time Out Period and the sale is at least 1/8 of a point lower than (for a buy order) or higher than (for a sell order) the stopped price. As is the case for SuperMax, all other aspects of the existing algorithm, including operating time, timing of execution, applicability to odd-lots, and out of range situations, remain the same.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [8] which requires that the rules of an exchange be designed, among other things, 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 securities, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On May 22, 1995, the Commission approved a proposed rule change of the CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[9] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

The Commission believes, in light of the industry's move to trading in finer increments last year, that CHX's modification to price improvement algorithms will provide investors a meaningful opportunity for price improvement when securities trading in 1/16's have a spread of 1/8 point or greater. In addition, the Commission finds that the new SuperMAX and Enhanced SuperMAX rules provide greater price improvement opportunities for investors because the criteria for when such opportunities are available has been simplified.[10] The Commission believes that, because the opportunity for price improvement is automatic and without any specialist intervention, SuperMAX and Enhanced SuperMAX facilitate order interaction and enhance customer orders consistent with Section 6(b)(5) of the Act. The Commission notes that while SuperMAX and Enhanced SuperMAX are voluntary programs that specialists choose to participate in for Dual Trading System issues,[11] providing a greater number of investors an opportunity to achieve price improvement is compatible with the views on best execution expressed in the Order Handling release.[12]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, SR–CHX–98–09, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In addition, in approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 19(b)(2), of the Act,[13] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–19986 Filed 7–24–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40230; File No. SR–MSRB–97–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–32, on Disclosures in Connection With New Issues

July 17, 1998.

I. Introduction

On March 12, 1998,[1] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule G–32, on disclosures in connection with new issues. The proposed rule change strengthens the provisions of the rule relating to dissemination of official statements among dealers and incorporates a long-standing Board interpretation relating to disclosures required to be made to customers in connection with negotiated sales of new issue municipal securities. Notice of the

[7] Under the proposal, small agency market orders for Enhanced SuperMax would be orders from 500 shares to 2099 shares (or a greater amount chosen by the specialist). Notwithstanding the 500 share minimum order size contained in the rule, the smallest size order eligible for Enhanced SuperMax must always be at least one share greater than the largest size order in such security that is eligible for SuperMax. In other words, if a specialist voluntarily increases the maximum order size for SuperMax, the minimum order size for Enhanced SuperMax must be increased accordingly.

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

[9] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR–CHX–95–08).

[10] The Exchange has compared the proposed changes to SuperMax with the existing SuperMax algorithm and believes that the new algorithm will provide price improvement to a greater number of trades. using data for January 1998, the Exchange determined that the proposed changes to the algorithm would have resulted in over 32,000 trades receiving price improvement (for a total savings of $329,000 to customers), as opposed to the 5800 trades that received price improvement (for a total savings of $126,000 to customers) under the existing SuperMax program. This means that the changes to SuperMax would have resulted in customers receiving $203,000 additional dollars of price improvement over the Exchange's existing SuperMax algorithm.

[11] Dual Trading issues are issues traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or the American Stock Exchange.

[12] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] The Board initially filed this proposal on December 22, 1997. However, an amendment was filed to restore rule language that the initial proposal deleted. The Board filed Amendment No. 1 on this date.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

proposed rule change appeared in the **Federal Register** on April 28, 1998.[4] This order approves the proposed rule change.

II. Description of the Proposal

Rule G–32, on disclosures in connection with new issues, provides that no broker, dealer or municipal securities dealer (''dealer'') shall sell any new issue municipal securities to a customer unless that dealer delivers to the customer, no later than the settlement of the transaction, a copy of the official statement in final form, if one is being prepared. In connection with a negotiated sale of new issue municipal securities, dealers are also required to deliver to their customers, by no later than settlement with the customer, information regarding, among other things, the initial offering price for each maturity in the new issue (termed the ''Offering Price Disclosure Provision''). Managing underwriters and other dealers that sell new issue municipal securities to purchasing dealers are required to furnish copies of the official statement to such purchasing dealers upon request, and dealers acting as financial advisors are also required to ensure that official statements are made available to the underwriters in a timely manner (termed the ''Dealer Dissemination Provisions'').

The Dealer Dissemination Provisions

All dealers that sell new issue municipal securities to customers, not just dealers that participate in the underwriting of the new issue, are required to deliver official statements to their customers by no later than settlement of their transactions. The Dealer Dissemination Provisions clarify that the onus is on the selling dealer to make official statements for new issues available to all dealers so that they may fulfill their customer delivery obligation under the rule. Dealers that are not part of the underwriting group have indicated from time to time that they have had some difficulty in obtaining official statements from the managing underwriter or other selling dealers on a timely basis. Thus, the amended Dealer Dissemination Provisions of Rule G–32 provide a specific timeframe and method for delivery of official statements to purchasing dealers.

The rule language outlining the managing underwriter's primary dissemination responsibilities has been modified for clarity. The amended rule language adds a requirement that the official statement be sent by the managing underwriter to the purchasing dealer no later than the business day after the request or, if the official statement has not been received from the issuer or its agent, the business day after receipt. The managing underwriters would be required to send official statements by first class mail or other equally prompt means unless the purchasing dealer arranges some other method of delivery at its own expense.[5] The amendments also add a requirement that the selling dealer send the official statement to the purchasing dealer within the same timeframe and by the same means as would be required of the managing underwriter.

The proposed rule change retains the existing requirement under Rule G–32 that a dealer acting as financial advisor that prepares an official statement on behalf of an issuer must make that official statement available to the managing or sole underwriter, but would change the timing for such availability from ''promptly after the award is made,'' as provided in the current rule, to ''promptly after the issuer approves distribution'' of the official statement in final form. The amendment ensures that, once the official statement is completed and approved by the issuer for distribution, dealers acting as financial advisors will be obligated to commence the dissemination process promptly.[6] Issuers using the services of non-dealer financial advisors are urged to hold these financial advisors to the same standards for prompt delivery of official statements to the underwriters, as those of regulated financial advisors.

The Offering Price Disclosure Provision

Since January 1983,[7] the Board has interpreted the Offering Price Disclosure Provision to require that the initial offering price of all maturities of a new issue of municipal securities in a negotiated offering must be disclosed to customers, even for maturities that are not reoffered. The amendment to the Offering Price Disclosure Provision of Rule G–32 incorporates into the rule language this long-standing Board interpretation. The application of the Offering Price Disclosure Provision to maturities that are not reoffered allows customers to determine whether the price they paid for a new issue municipal security is substantially different from the price being paid by presale purchasers.

III. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[8] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[9] of the Act. This proposed rule change should help dealers comply with their obligation to deliver official statements to their customers by settlement and should more effectively ensure rapid dissemination of official statements to customers and to the marketplace generally, than has been occurring under the past version of the rule.[10] Incorporating a specific timeframe in the Dealer Dissemination Provisions injects accountability in the disclosure process. Compliance will be based on objective factors, not a dealer's interpretation of a vague standard. Furthermore, although the proposed amendment removes specific references in the existing rule to underwriters that

[4] *See* Securities Exchange Act Rel. No. 39904 (April 22, 1998), 63 FR 23311.

[5] These obligations of the managing underwriter will apply with respect to all purchasing dealers, even where the managing underwriter does not sell the securities to the purchasing dealer.

[6] Of course, this amendment would not relieve dealers acting as financial advisors of their obligations to comply with their contractual arrangements entered into with issuers and with all applicable state and federal statutes, regulations and common law. Thus, in particular, in instances where a dealer, acting as financial advisor, has a contractual or other legal duty to assist an issuer in complying with its contractual obligation to deliver final official statements within the timeframe and in the quantities set forth in Rule 15c2–12(b)(3) under the Act, such obligation would not be diminished by implementation of the amendment.

[7] *See MSRB Reports,* Vol. 3, No. 1 (Jan. 1983), ''Rule G–32 + Frequently Asked Questions Concerning Disclosures in Connection with New Issues,'' at 25–27. *See also MSRB Reports,* Vol. 6, No. 4 (Sept. 1986), ''Disclosure Requirements for New Issue Securities: Rule G–32,'' at 17–20 and *MSRB Reports,* Vol. 16, No. 3 (Sept. 1996), ''Disclosures in Connection with New Issues: Rule G–32,'' at 19–23.

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. Establishing a specific timeframe by which selling dealers must provide the requisite documentation enhances efficiency as the date for compliance is quantifiable and can be specifically determined. Also, requiring disclosure be made by a specific date to all similarly-situated dealers, eliminates any competitive advantage gained by uneven distribution of the requisite information. 15 U.S.C. 78c(f).

[9] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are 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.

[10] Specifically, the provisions of the proposed rule change and of the Bond Market Association's Standard Agreement Among Underwriters would effectively obligate the managing underwriter to send the official statement to syndicate members within one business day of receipt from the issuer. *See supra* note 4, p. 23313, n.5.

prepare official statements on behalf of issuers, the Commission is of the opinion that an underwriter that prepares an official statement on behalf of an issuer would be deemed to have received the official statement from the issuer immediately upon the issuer approving the distribution of the completed official statement in final form.

In codifying its long-standing position in the Offering Price Disclosure Provision, the Board not only improves the information available to customers to determine the cost of their investments, but also improves the historical data analysts use to compare similarly priced and structured deals in various municipalities. The Commission believes disclosure of accurate pricing data should help facilitate competitive pricing in the municipal securities markets.

IV. Conclusion

For the above reason, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–MSRB–97–14), is hereby approved/

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–19985 Filed 7–24–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40229; File No. SR–NYSE–98–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to an Interpretation of Article IV, Section 14 of the Exchange Constitution

July 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to interpret Article IV, Section 14 of the Exchange Constitution to provide that decisions of the Director of Arbitration regarding jurisdiction and hearing situs are not subject to review by the Exchange's Board of Directors.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed resolution is to interpret Article IV, Section 14 of the Exchange Constitution so that decisions of the Director of Arbitration on issues of jurisdiction and hearings situs are not subject to review by the Exchange's Board at the request of a member, member organization, allied member or approved person. This section of the Exchange Constitution provides that where the Board has delegated its powers to an officer or employee, ''a member, member organization, allied member of approved person affected by a decision of any officer or employee * * * may require a review by the Board of such decision.'' No explicit exception is made for actions taken by the Director of Arbitration. Moreover, this provision is not applicable to persons other than members, member organizations, or allied members of approved persons affected by a decision of the Director of Arbitration. However, Exchange Rule 621 and applicable law provide for the review of the Director's decisions by arbitrators or the courts. In addition, the Board has the authority to interpret the Constitution.[1]

The Director of Arbitration is ''charged with the duty of performing all ministerial duties in connection with matters submitted for arbitration.'' [2] These duties include making the initial decisions regarding jurisdiction and hearing situs.[3] Exchange Rule 613 deals with the situs of a hearing and provides that ''[t]he time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators.''

Article XI, Section 1 of the Exchange Constitution and Exchange Rule 600 establish the jurisdiction of the Exchange's arbitration forum.[4] When a claim is submitted for arbitration at the Exchange, the Director of Arbitration, as part of the ''ministerial duties in connection with matters submitted for arbitration,'' determines whether the claim submitted falls within the parameters of the Exchange's jurisdiction.

The arbitrators are empowered to interpret and determine the applicability of all provisions of the Arbitration Rules [5] and thereby the Exchange believes they can overturn decisions of the Director of Arbitration regarding situs of he first hearing. Decisions of the Director Arbitration regarding jurisdiction are subject to review by the courts.[6]

The NYSE notes that in the past, members have requested, and the Board has granted, review of the Director of Arbitration's decisions on jurisdiction and hearing situs.

The Exchange notes that interlocutory procedural decisions are rarely appealable in judicial and arbitral

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[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] Article IV, Section 13.

[2] Exchange Rule 635.

[3] Exchange Rules 600 and 613.

[4] ''Any controversy between parties who are members, allied members or member organizations and any controversy between a member, allied member or member organization and any other person arising out of the business of such member, allied member or member organization, or the dissolution of a member organization, shall at the instance of any such party, be submitted for arbitration in accordance with the provisions of this Constitution and such rules as the Board may from time to time adopt.'' (Article XI, Sec. 1).

''Any dispute, claim or controversy between a customer or non-member and a member, allied member, member organization and/or associated person arising in connection with the business of such member, allied member, member organization and/or associated person in connection with his activities as an associated person shall be arbitrated under the Constitution and Rules of the New York Stock Exchange, Inc. as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-member.'' Exchange Rule 600.

[5] *See* Exchange Rule 621.

[6] *Spear, Leeds & Kellogg* v. *Central Life Assurance Co.*, 85 F.3d 21 (2d Cir. 1996).