

distribution during the year will be included with the applicant's annual tax information reporting distributions for that year and sent to each shareholder who receive distributions during the year, including shareholders who have sold shares during the year.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividends") where the distribution would result in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end management investment companies, such as applicant, which do not continuously distribute their shares. Applicant further asserts that if it makes a rights offering to its shareholders, the rights offering will be timed so that share issueable upon exercise of the rights will be issued only in the six week period immediately following the record date for the declaration of a dividend. Thus, the abuse of selling the dividend could not occur as a matter of timing. Applicant further states that any offering by applicant of transferable rights will comply with all Commission and staff guidelines concerning such offering. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any such offering by applicant of transferable rights will also comply with any applicable NASD rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested relief satisfies this standard.

Applicant's Condition

Applicant agrees that any Commission order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than:

(i) A rights offering with respect to applicant's common stock in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectors for the rights offering makes it clear that the shareholders exercising the rights will not be entitled to receive such dividend, and (c) the applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of applicant; unless applicant has received from the staff of the Commission assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-26020 Filed 9-20-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40456; File No. SR-MSRB-97-15, Amdt. No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rules G-11, on Sales of New Issue Municipal Securities During the Underwriting Period, G-12, on Uniform Practice, and G-8, on Books and Records

September 22, 1998.

On August 18, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 1 to its File No. SR-MSRB-97-15 (hereafter referred to as "Amendment No. 1"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² Amendment No. 1 is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

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

The Board is filing herewith Amendment No. 1 to its previously proposed amendment to Rule G-11(g)(i),

on sales of new issue municipal securities during the underwriting period. Amendment No. 1 retains the requirement of the previously proposed amendment to Rule G-11(g)(i) to complete the allocation of securities within 24 hours of the sending of the commitment wire. Amendment No. 1 further provides that, if the bond purchase agreement is not yet signed or if the award is not yet made at the time allocations are made, such allocations are subject to the signing of the bond purchase agreement or the award of bonds and the purchaser must be informed of this fact.

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 Board included statements concerning the purpose of and basis for Amendment No. 1 and discussed any comments it received on Amendment No. 1. The texts of these statements may be examined at the places specified in Item IV below. The Board 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

On December 23, 1997, the Board filed with the Commission proposed amendments to Rules G-11, G-12 and G-8 to strengthen further the integrity of the syndicate practices process. One of the amendments to Rule G-11(g) would require the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire. The Board adopted this amendment to ensure a timely allocation process in the industry.

Notice of the proposed rule change appeared in the **Federal Register** on April 21, 1998.³ The Commission received three comment letters in response to the notice. One of the commenters was the City of New York.⁴ The City of New York states that it is a mistake to assume that the bond purchase agreement will be signed prior to the completion of the allocation. It notes that it is the City's practice to sign a bond purchase agreement on the

³ See Securities Exchange Act Rel. No. 39873 (April 14, 1998), 63 FR 19775.

⁴ The Board responded to issues raised in comment letters to the Commission from The Bond Market Association and Salomon Smith Barney by letter dated June 10, 1998, to Mignon McLemore, Attorney, from Ronald W. Smith, Senior Legal Associate.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

second day following the verbal award of its refunding bonds and that, due to the complexity of the City's refundings, it would be virtually impossible to complete the work necessary to permit a bond purchase agreement to be signed within 24 hours of the verbal award. The letter notes that the City of New York has been advised that allocations may be completed (and investors can be given notice of the allocations) prior to the signing of the bond purchase agreement. In such cases, the allocations are made subject to execution of a bond purchase agreement and investors are so notified. The letter states that underwriters have advised the City of New York that this is a fairly common practice.

The City of New York does not want the amendment to Rule G-11(g) to be interpreted as requiring that a bond purchase agreement be signed within 24 hours of the sending of the commitment wire. It suggests that the rule language be amended to state: "Within 24 hours of the sending of the commitment wire, complete the allocation of securities (which may be made subject to execution of a bond purchase agreement)." As an alternative, the City of New York states that the Board could provide an exemption to the proposed requirement by allowing a 48-hour period for allocations of refunding bonds.

The Board agrees with the City of New York that the proposed amendment does not require that the bond purchase agreement be signed within 24 hours of the sending of the commitment wire. In many instances, the bond purchase agreement is signed within 24 hours of the sending of the commitment wire, but there are circumstances in which this is not done (e.g., the City of New York example of refunding delays and when the issuing authority is unable to schedule a meeting to approve the final pricing until two to three days after the sending of the commitment wire). The Board also agrees that, prior to the signing of the bond purchase agreement in a negotiated offering or the official award of bonds in a competitive sale, any allocations made must be subject to the execution of the bond purchase agreement or the award, as appropriate. Moreover, the Board believes it is important that investors be made aware of this fact. Although the signing of the bond purchase agreement or the adoption of the award resolution is often viewed as a technicality, if the market moves dramatically before the signing or adoption, prices may change or the deal may not be finalized.

Therefore, the Board determined to adopt Amendment No. 1 to the

proposed rule change to revise the language of the proposed amendment to Rule G-11(g)(i). The revised amendment retains the requirement to complete the allocation of securities within 24 hours of the sending of the commitment wire. It further provides that, if the bond purchase agreement is not yet signed or if the award is not yet made at the time allocations are made, such allocations are subject to the signing of the bond purchase agreement or the award of bonds and the purchaser must be informed of this fact.

In addition, the Board wishes to remind dealers about a prior Board interpretation regarding the sending of confirmations prior to the signing of the bond purchase agreement or date of award. Rule G-15, on confirmation, clearance and settlement of transactions with customers, requires that a confirmation be sent in all transactions, whether the transaction is done "when, as and if issued" or "regular-way."⁵ Rule G-12(c), on uniform practice, requires that, for transactions effected on a "when, as and if issued" basis, initial confirmations be sent within two business days following the "trade date."⁶ In a published interpretive letter on Rule G-12,⁷ the Board stated that, for purposes of this requirement, "trade date" should be understood to refer to, in the case of a competitive new issue, a date no earlier than the date of award of the new issue of municipal securities, and, in the case of a negotiated new issue, a date no earlier than the date of signing of the bond purchase agreement. Therefore, Board rules do not allow "when, as and if issued" confirmations reflecting the allocation of new issue securities to "pre-sale" orders to be sent to customers before the date of award or of signing of the bond purchase agreement. The Board stated that, in reaching this conclusion, it does not intend to call into question the validity of a "pre-sale" order received for a syndicate's securities or the practice of soliciting such orders. The Board recognizes that such orders are expressions of the purchaser's firm intent to buy the new issue securities in

⁵ Rule G-15(a)(iii) further states that a dealer may send a confirmation for a "when, as and if issued" transaction executed prior to determination of settlement date. If such a confirmation is sent, it must include all the information required by Rule G-15(a) with the exception of settlement date, dollar price for transactions executed on a yield basis, yield for transactions executed on a dollar price, total monies, accrued interest, extended principal and delivery instructions.

⁶ Pursuant to Rule G-12(a), any inter-dealer transaction that is submitted to NSCC for comparison is exempt from Rule G-12(c).

⁷ MSRB Manual, General Rules, MSRB Interpretation (CCH) ¶ 3556.55.

accordance with the stated terms, and that such orders may be filled and confirmed immediately upon the award of the issue or the execution of a bond purchase agreement. The Board is of the view, however, that such orders cannot be deemed to be executed until the time of the award of the new issue or the execution of a bond purchase agreement on the new issue. Mailing of confirmations on such orders prior to this time, therefore, is a representation that the orders have been filled before this actually occurs, and, as such, may be deceptive or misleading to the purchasers.

The Board believes Amendment No. 1 is consistent with Section 15B(b)(2)(C) of the Act.⁸

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

The Board does not believe that Amendment No. 1 would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

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

Written comments relating to Amendment No. 1 were neither solicited nor received.

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

⁸ Section 15B(b)(2)(C) states that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles for 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.

arguments concerning the foregoing, including whether Amendment No. 1 is consistent with Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 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-97-15, Amendment No. 1 and should be submitted by October 20, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,

Secretary.

[FR Doc. 98-25920 Filed 9-28-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40455; File No. SR-NASD-98-01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4, Relating to the NASD's Rules Regarding Electronic Communications Networks, Locked and Crossed Markets, and a Member's Obligation to Provide Nasdaq with Certain Information

September 22, 1998.

I. Introduction

On January 27, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ a proposed rule change to

amend the NASD's rules on locked and crossed markets and to propose a new rule to require NASD members to provide Nasdaq staff with certain information upon request. Nasdaq filed Amendment No. 1 to the proposal on June 8, 1998,² Amendment No. 2 on June 30, 1998,³ and Amendment No. 3 on July 16, 1998.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on July 24, 1998.⁵ The Commission received three comment letters on the proposal. On August 26, 1998, in response to issues raised by commenters, Nasdaq filed Amendment No. 4 to the proposal.⁶ The Commission is publishing this notice and order to solicit comments on Amendment No. 4 and to approve the proposed rule change, as amended.

II. Background

SEC Rule 11Ac1-1(c)(5) ("ECN Rule"),⁷ requires a Nasdaq market maker to reflect in its public quotes any superior prices for orders that the market maker privately places within an electronic communications network ("ECN"). A market maker will be deemed to have complied with the ECN Rule if the ECN in which the market maker has placed a superior priced order displays the best ECN prices in Nasdaq's quote montage and provides broker-dealers that do not subscribe to the ECN's service access, through Nasdaq, to those publicly displayed prices. To accommodate this "ECN Display Alternative," Nasdaq allowed ECNs to display their best prices from market makers and other ECN subscribers in the Nasdaq quote. It created a link to its SelectNet service to permit Nasdaq members to access those prices by sending orders to ECNs through SelectNet.

² See letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated June 5, 1998.

³ See letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division, SEC, dated June 29, 1998.

⁴ See letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Richard Strasser, Assistant Director, Division, SEC, dated July 15, 1998.

⁵ See Securities Exchange Act Release No. 40227 (July 17, 1998), 63 FR 39919 (July 24, 1998).

⁶ See Letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Richard Strasser, Assistant Director, Division, SEC, dated August 25, 1998. Amendment No. 4 clarifies that ECNs are not required to register manually in each security with Nasdaq Market Operations.

⁷ The ECN Rule is embodied in SEC Rule 11Ac1-1. 17 CFR 240.11Ac1-1.

Based on its experience with the ECN Rule and operation of the SelectNet linkage, Nasdaq determined that it was necessary to revise certain NASD rules. For instance, certain ECN procedures regarding reserved quotation size appear to cause an increased incidence of locked and crossed markets, particularly at the market opening. Moreover, Nasdaq did not have an adequate mechanism in place to obtain important regulatory information from NASD members on a timely basis. Nasdaq, therefore, proposed to amend NASD Rules 4613(e) and 4623, as well as adopt new NASD Rule 4625, to address these issues.

III. Description

Nasdaq proposes to amend NASD Rule 4613(e) to clarify that if, at or after 9:25:00 a.m. Eastern Time, a market maker or ECN enters a quotation that would lock or cross the market at the opening,⁸ that market maker or ECN must act (such as by sending a SelectNet order to take out the quotation that will be crossed or locked, or canceling its own quotation) to avoid locking or crossing the market at the opening, but in no case later than 30 seconds thereafter (*i.e.*, 9:30:30 a.m.). The 9:25 a.m. benchmark will permit market makers and ECNs to determine which party entered a market-locking/crossing quotation, and thus which party is obligated to unlock or uncross the market at the opening. The 9:30:30 provision establishes a deadline by when the market participant must resolve the locked or crossed market.

Nasdaq is also proposing to amend NASD Rule 4623 regarding ECNs. Under proposed NASD Rule 4623(c), if an ECN displays in Nasdaq an order having a reserved size and a market participant attempts to access that order by sending an order that is larger than the displayed size, the ECN would be required to execute the Nasdaq-delivered order: (1) Up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portion) is the same size as or larger than the Nasdaq-delivered order; or (2) up to the size of the ECN order (including the reserved size and displayed portion), if the Nasdaq-delivered order is the same size as or larger than the ECN order (including the reserved size and displayed portion).⁹

⁸ A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

⁹ Nasdaq also proposed to amend NASD Rule 4623(b)(4) to specify an ECN's obligation to register with Nasdaq Market Operations. As discussed

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).