IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 persons, 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–58 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32329 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40717; File No. SR–MSRB–97–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change and Amendment No. 1 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

November 27, 1998.

I. Introduction

On December 23, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend 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. Notice of the proposed rule change appeared in the **Federal Register** on April 21, 1998.[3] The Commission received two comment letters concerning the proposed rule change.[4]

The MSRB received one comment letter concerning the proposed rule change.[5] On August 18, 1998, the Board submitted Amendment No. 1 to Rule G–11(g)(i) of the proposed rule change on sales of new issue municipal securities during the underwriting period. Notice of Amendment No. 1 appeared in the **Federal Register** on September 29, 1998.[6] The Commission received one comment letter concerning Amendment No. 1.[7] This order approves the proposed rule change and Amendment No. 1.

II. Description of the Proposal and Amendment No. 1

The proposed rule change requires the managing underwriter of a syndicate to maintain a record of all issuer syndicate requirements; requires the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire; requires the managing underwriter to disclose to syndicate members all available designation information; requires the managing underwriter to disclose to members of the syndicate, in writing, the amount of any portion of the take-down that is directed to each member of the syndicate by the issuer; and shortens the deadline for payment of designations to 30 calendar days after the issuer delivers the securities to the syndicate.

Amendment No. 1 retains the requirement of the proposed change to Rule G–11(g)(i) 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 (''BPA'') is not yet signed or if the award has not been made at the time allocations are made, the allocations are subject to the signing of the BPA or the award of bonds. The purchaser must be informed of this fact.

Issuer syndicate requirements

Issuer requirements involving syndicate formation, order review, designation policies and bond allocations have become much more prevalent in the municipal securities market. Such requirements are significant because they help to determine which dealers, and ultimately which investors, obtain the bonds. As issuer syndicate requirements can affect the functioning of the syndicate, and at times the final costs to the issuer of the new issue, the records of such requirements should be maintained so that any problems or concerns regarding the functioning of the syndicate arising from these requirements can be identified and addressed and the information must be provided to syndicate members and others, upon request.

The proposed rule change amends Rules G–8(a)(viii) and G–11(f) to require the managing underwriter to maintain a record of all issuer syndicate requirements. If the requirements are in a published guideline, the guideline should be maintained by the dealer and supplemented by a statement of any additional requirements that arise prior to settlement. If the requirements are not in published form, the managing underwriter must create a written detailed statement of the requirements and maintain the statement in its records. The managing underwriter must provide a copy of the published guideline or underwriter prepared statement of issuer syndicate requirements to syndicate members prior to the first offer of any securities by the syndicate. Syndicate members must furnish this summary promptly to others, upon request. In addition, the managing underwriter must provide the

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

[2] 17 CFR 240.19b–4.

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

[4] Letters from George Brakatselos, Vice President, The Bond Market Association, to Secretary, Securities and Exchange Commission, dated May 12, 1998 (''TBMA Letter No. 1'') and David B. Levy, Director & Associate General Counsel, Capital Markets Division, SalomonSmithBarnery, to Secretary, Securities and Exchange Commission, dated May 13, 1998 (''Salomon Letter'').

[5] Letter from Mark Page, Deputy Director and General Counsel, Office of Management and Budget and John White, Deputy Comptroller for Public Finance, New York City Comptroller's Office, City of New York, to Terry L. Atkinson, Chairman, MSRB, dated June 5, 1998 (''HYC Letter''). The Board concurred with the NYC Letter that Rule G–11(g)(1) should not be interpreted to required that a bond purchase agreement (''BPA'') be signed within 24 hours of the sending of the commitment wire. As the Board would not meet again before August 1998, it consented to an extension for Commission action until August 31, 1998. Letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Mignon McLemore Esq., Division of Market Regulation, SEC, dated June 26, 1998.

[6] Securities Exchange Act Rel. No. 40456 (September 22, 1998), 63 FR 51976 (''Amendment No. 1'').

[7] Letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, SEC, dated October 19, 1998 (''TBMA Letter No. 2'').

issuer with a copy of any such statement for its review.

Disclosure of designation information

The proposed rule change amends Rule G–11(g) to require that the managing underwriter disclose to syndicate members all available designation information within 10 business days following the date of sale and all information with the sending of the designation checks.

Payment of designations

The proposed rule change amends Rule G–12(k) to move the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar dates after the issuer delivers the securities to the syndicate.

Disclosure of take-down

A small number of issuers are ''setting aside,'' or holding back, at their discretion, a portion of the take-down [8] to direct to syndicate members. As this issuer ''set-aside'' is part of the take-down, it should be disclosed to syndicate members in the same manner as customer designations. The proposed rule change amends Rule G–11(g) to require the managing underwriter to disclose to members of the syndicate, in writing, the amount of any portion of the take-down that is directed to each member of the syndicate by the issuer. Such disclosure must be made by the later of 15 business days following the date of sale or three business days following receipt by the managing underwriter of notification of such set-asides by the issuer.

Allocation of securities

The proposed rule change amends Rule G–11(g) to require the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire. This amendment attempts to address delays in allocations of securities which may be the result of issuers and financial advisors failing to review orders and proposed allocations in a timely fashion. In case where there is a delay in allocation, investors may find it difficult to finalize their portfolio positions when their orders remain unfilled for as long as two or more days after the end of the order period. Moreover, during volatile market conditions, delays in allocations hurt the prospect for a successful underwriting.

[8] The *takedown* is normally the largest component of the spread, similar to a commission, which represents the income derived from the sale of securities.

Amendment No. 1

The proposed rule change requiring the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire implies that the BPA will be signed prior to the completion of the allocation. It is possible that allocations may be completed (and investors notified of these allocations) prior to the signing of the BPA. Amendment No. 1, therefore, revises the proposed rule change to include this exception in the rule language.

III. Summary of Comments

The Commission received two comment letters [9] concerning the proposed rule change and one comment letter [10] concerning Amendment No. 1. The Commission requested and received a response to these comments from the MSRB.[11] The MSRB received one comment letter from New York City.[12] In response to issues raised in this letter, the MSRB submitted Amendment No. 1 to the Commission.[13]

TBMA strongly opposed the proposed amendments which would require the managing underwriter to maintain and, where applicable, record all issuer requirements involving syndicate formation, order review, designation policies, and bond allocations.[14] Any requirement that would result in underwriters spending substantial amounts of time preparing documents and obtaining issuer approvals is neither productive nor practical.[15] TBMA suggested that ''issuers seeking to impose their requirements on syndicates must take the initiative to enunciate such requirements, in writing, and publish them so they are available to all who are involved, or considering becoming involved, in a syndicate for that issuer.'' [16]

According to the Board, ''managing underwriters currently take issuer direction on syndicate matters and release such information to the syndicate members.'' [17] Thus, the proposed amendments are essentially codifying current syndicate practices.[18] The Commission agrees with the Board that the additional requirements should not be unduly burdensome to the managing underwriter, as they are codifying existing practices. The Commission notes that dealers can address other issuer problems through contract.

TBMA also opposed the amendment to Rule G–11(g). The amendment not only established a time limit for completing the allocation of securities, it also urged issuers and their financial advisors to review orders and proposed allocations as soon as possible so as not to delay dissemination of information to investors.[19] While TBMA supports prompt completion of the allocation, it strongly opposed the amendment because, as drafted, the lead manager's compliance would be wholly dependent upon the timely performance of financial advisors and issuers.[20] TBMA noted that it generally opposes any attempts by the MSRB to modify the behavior of entities that are not directly regulated by the MSRB through the regulation of the dealer community.[21] ''A municipal securities dealer should not be faced with a possible violation of MSRB rules where compliance by the dealer is dependent upon a specific action of an unregulated entity.'' [22] This places the dealer in the untenable position of being charged with a violation of MSRB rules through no fault of its own.[23]

The Board determined to adopt the proposed rule change as drafted, because it will assist investors by greatly facilitating the allocation process.[24] According to the MSRB, delays in allocations can adversely affect investors' portfolio positions and the underwriting.[25] By placing a time limit on the allocation of the securities, the Board believes underwriters will ensure compliance with the proposal by either including a provision in the BPA or otherwise reaching an agreement with issuers, that allocations must be completed within the 24 hour timeframe.[26] ''If issuers or financial advisors wish to review orders and proposed allocations, they will have to

[9] *See* note 4 *supra.*

[10] *See* note 7 *supra.*

[11] Letter from Ron W. Smith, Senior Legal Associate, MSRB, to Mignon McLemore, Attorney, Division of Market Regulation, SEC, dated June 10, 1998 (''MSRB Letter''). The TBMA's second letter was received after the MSRB Letter. The Commission believes the MSRB's letter sufficiently addresses both TBMA letters, because TBMA's second letter reiterates much of its submission.

[12] *See* note 5 *supra.*

[13] *See* note 6 *supra.*

[14] TBMA Letter No. 1 at 1.

[15] *Id* at 1–2.

[16] *Id* at 2.

[17] MSRB Letter at 1.

[18] *Id.*

[19] TBMA Letter No. 1 at 2.

[20] *Id.*

[21] *Id. See also* Salomon Letter at 1.

[22] *Id.*

[23] *Id. See also* Salomon Letter at 1 (stating that municipal securities dealers should neither be forced to ''police'' the activities of unregulated entities nor be faced with regulatory sanctions for activities that are beyond their direct control).

[24] MSRB Letter at 2.

[25] *Id.*

[26] *Id.*

do so within 24 hours.'' [27] The Commission believes that any unnecessary delay in distribution securities, once the BPA has been executed, can disadvantage syndicate members and ultimately, investors. Thus the Commission supports the shortened timeframe in which syndicate managers must complete the allocation of securities.

In its second letter, TBMA reiterated its opposition to the proposed rule change.[28] However, TBMA did agree with the specific proposal in Amendment No. 1 which provides that allocations completed prior to execution of the BPA would be made subject to execution of that agreement.[29] As the TBMA's positions remain unchanged, the MSRB's response sufficiently addresses the issues raised in the second letter.

Salomon generally opposed the proposed rule change for reasons similar to those stated by TBMA.[30] Specifically, Salomon believed that syndicate members would be the economic beneficiaries of these changes and senior managers would bear the cost.[31] According to Salomon, the cost of doing business in municipal securities has increased while the revenue generated by the business has decreased.[32] Moreover, each time the syndicate requirements are modified, the senior managers expend significant amounts of resources to ensure their systems are in compliance.[33]

In its response, the Board stated that it was concerned that syndicate members (and ultimately customers) have information regarding issuer requirements to help frame orders.[34] Requiring the dissemination of this information to syndicate members helps ensure that managers are ''following the rules'' of the syndicate so that, if there are any problems regarding the economics of the deal, they can be corrected prior to settlement or when the syndicate monies are distributed.[35] The Board recognizes that syndicate managers may incur additional costs complying with these requirements, however, it believes the benefits of disclosure to syndicate members of important information on syndicate operations outweigh such costs.[36] The Commission believes that the benefits of increased disclosure (*e.g.*, investor protection, market transparency, and equal access to the municipal securities market) outweigh costs that may be incurred as a result of the proposed rule change. Thus, the Commission supports the proposed rule change.

Salomon strenuously objects to the proposal that syndicate managers disclose to syndicate members information relating to designations.[37] Salomon contends that because it and similarly-situated firms provide a full range of services to issuers and investors and they spend significant resources to maintain the infrastructure to provide those services, designations are the way they realize a return on the investment in that infrastructure.[38] Moreover, it is Salomon's view that the proposals run counter to the interest of investors.[39] According to Salomon, information concerning designations is competitive, confidential information that should be known only to the beneficiary of the designation and the syndicate manager (in its capacity as bookrunner of the underwriting) and should only be disclosable by the investor.[40]

The Board disagrees that investors would object to the disclosure of designation information.[41] The amendment does not require that the identity of the investors providing the designations be disclosed, only that the total amount of the designations for each dealer be disclosed.[42] The Board believes that all syndicate members have the right to the disclosure of all designation information.[43] The MSRB believes that the proposed rule change will help ''assure syndicate members of equitable distribution of the economics of the deal pursuant to syndicate requirements.''[44]

The Commission reiterates its position that it supports more disclosure in the municipal securities markets. The Commission respects investors' right to choose the firms with which to do business as well as syndicate members' rights to accept designations. The Commission believes, however, that the amount of the designation each member receives should be disclosed to prevent fraudulent and manipulative practices in the municipal securities market. According to the Board, confidentiality is preserved because only the total amount of the designations is disclosed, thus investors will ''be free to designate any firm without fear of reprisal or pressure from other syndicate members.'' The Commission, therefore, supports this proposed rule change.

IV. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[45] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C) [46] of the Act. This proposed rule change should help protect investors and the public interest through its enhanced disclosure and recordkeeping requirements which are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The Commission believes the proposal, which requires managing underwriters to maintain and where necessary, create records of issuer requirements, is a reasonable requirement to impose on a syndicate manager of a new issue of municipal securities. A syndicate manager has the primary responsibility for conducting the affairs of the syndicate. Thus, it is appropriate to require the syndicate manager to be responsible for the recordkeeping concerning syndicate activities. The Commission recognizes that these managers could experience an increase in costs attempting to comply with these requirements. However, syndicate managers are allowed to recover expenses for administrative tasks performed for the benefit of the syndicate. Further, resolving accounting discrepancies or other syndicate disputes would be less cumbersome and time-consuming if accurate records have

[27] *Id.*
[28] TBMA Letter No. 2 at 1–2.
[29] *Id.* at 2.
[30] Salomon Letter at 1.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] MSRB Letter at 2.
[35] *Id.*
[36] *Id.*
[37] Salomon Letter at 2.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] MSRB Letter at 2.
[42] *Id.*
[43] *Id.*
[44] *Id.*

[45] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The proposed rule change should improve efficiency in recordkeeping and information dissemination because the syndicate manager must now maintain a record of issuer requirements. Competition in the marketplace should also benefit as designation information will be available to all members of the syndicate, thus making collusion in the municipal securities market more difficult. The proposal shortens the deadline for payment of designations which should decrease the time it takes for firms to receive revenue which should benefit capital formation. 15 U.S.C 78c(f).

[46] 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.

been maintained and are readily accessible.

The Commission believes the proposal, requiring managing underwriters to disclose all available designation information, should encourage competition among dealers for other designations in subsequent underwritings. The proposal should not result in fixed pricing because only the designation amounts are being revealed. Investors will still be able to designate any firm they choose, because the investors' identities will remain confidential. Furthermore, disclosure of all designation information should prevent delays in disseminating full designation payments to members because designation information must be made available to syndicate members within ten business days following the date of sale. This requirement should, therefore, help ensure members receive the full designation credit they have earned.

The Commission also supports shortening the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar days after the issuer delivers the securities to the syndicate. The shortened deadline should prevent syndicate mangers from unnecessarily delaying payment of designations to syndicate members.

The Commission agrees that an issuer ''set-aside'' is part of the take-down and, therefore, should be disclosed to syndicate members in the same manner as customer designations. This proposed rule change should act as a deterrent to fraudulent activity because disclosure of take down information including each dealers' percentage must be made by the later of 15 days following the date of sale or three business days following receipt by the managing underwriter of notification of any set-asides by the issuer. Furthermore, timely disclosure of this information will allow dealers to verify the accuracy of the information and, where necessary, address any discrepancies before settlement.

The Commission supports the proposed rule change and Amendment No. 1 concerning the allocation of securities. The proposed rule change required that the managing underwriter complete the allocation of securities within 24 hours of the sending of the commitment wire. In its letter to the MSRB, NYC contended that the proposed rule change erroneously assumed that a BPA would be signed prior to the completion of the allocation.[47] the NYC letter suggested that the allocation may be completed (and investors be given notice of the allocations) prior to the signing of the BPA.[48] In response, the MSRB amended its proposal to include that any allocations made prior to the signing of the BPA in a negotiated offering or the official award of the bonds in a competitive sale must be subject to execution of a BPA or the award, as appropriate. Furthermore, investors must also be notified of this fact.[49]

In cases where the BPA is signed before the commitment wire is sent, the Commission believes 24 hours should give the senior syndicate manager enough time to complete the allocation of securities. The Commission understands that there are occasions, however, when a deal is so complex that it takes longer than 24 hours after the commitment wire is sent to complete the process (*e.g.*, production and verification of final numbers, final sizing of the bond sale) so that a BPA may be signed. The Commission, therefore, supports the amended language which recognizes this exception,[50] but protects investors by requiring full disclosure of the deal's status. Thus, investors will be aware that the deal could be subject to market fluctuations or may not even be finalized.

V. Conclusion

For the above reasons, 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,[51] that the proposed rule change and Amendment No. 1 (SR–MSRB–97–15), are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32324 Filed 12–3–98; 8:45 am]

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[47] NYC Letter at 1.

[48] *Id.* at 2.

[49] Amendment No. 1 at 51977.

[50] In these situations, the Commission notes that senior syndicate managers should consult the MSRB's rules and interpretations concerning the sending of confirmations prior to the signing of the BPA or the date of the award. Amendment No. 1 at 51977.

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–40711; File No. SR–NYSE–98–34)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 104.10 By Deleting the Odd-Lot Exception

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 1998, the New York Stock Exchange, Inc. (''NYSE'') 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 NYSE. 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 is proposing to amend NYSE Rule 104.10(6)(i) by eliminating paragraph (C), which provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset positions acquired by the specialist in executing odd-lot orders on the same day.

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 NYSE 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 NYSE 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

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(6) describes the manner in which a specialist may liquidate or increase his

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

[2] 17 CFR 240.19b–4.