

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-19 and should be submitted by May 29, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45857; File No. SR-ISE-2002-12]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to Fee Changes

May 1, 2002.

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 April 23, 2002, the International Securities Exchange LLC ("ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

III below, which the ISE has prepared. 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 ISE is proposing to clarify the manner in which the ceiling on its payment-for-order-flow program will operate. The ceiling for each fund is set at \$650,000. The payment for order flow fee would be suspended for a group of options when the fund balance for the group exceeds \$650,000, but would be reinstated when any such fund balance falls below \$650,000. The text of the proposed rule change is available at the ISE and at the Commission.

#### 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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

The purpose of the proposed rule change is to clarify the manner in which the ceiling on the ISE's payment for order flow program will operate. In SR-ISE-2002-09,<sup>3</sup> the ISE lowered the ceiling from \$750,000 to \$650,000 for each of the ten payment-for-order-flow funds that it maintains.<sup>4</sup> The ISE did not specify in that filing that the fee would be reinstated if a fund balance falls below the ceiling. This proposed rule change provides that clarification.

The basis for this proposed rule change is the requirement under Section

6(b)(4) of the Act<sup>5</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

#### 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) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> because it changes an ISE fee. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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.

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the 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

<sup>8</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.

<sup>3</sup> See Securities Exchange Act Release No. 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002). See also Securities Exchange Act Release No. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) (establishing the original \$750,000 ceiling).

<sup>4</sup> Under ISE Rule 802(b), the ISE has divided the options it trades into ten groups, with one Primary Market Maker assigned to each group. The ISE maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the ISE in options in that group.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to ISE-2002-12 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45861, File No. SR-MSRB-2002-04]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change by the Relating to Rule G-14, on Reports of Sales or Purchases

May 1, 2002.

On March 27, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-04) 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> The proposed rule change relates to MSRB Rule G-14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change does not change the wording of Rule G-14.

The Commission published the proposed rule change in the **Federal Register** on April 4, 2002. The Commission received five comment letters relating to the forgoing proposed rule change. This order approves the proposal.

### I. Description of the Proposed Rule Change

The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report (the "Report"), which has been provided to subscribers each day since January 2000. The report is made available each morning by 7:00

am and includes details of transactions in municipal securities which were "frequently traded" the previous business day. Since the beginning of the Transaction Reporting Program in 1995, "frequently traded" securities have been defined as those that were traded four or more times on a given business day.

Since 1995, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a T+1 report that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began publishing individual transaction data on frequently traded securities in addition to summarizing their high, low and average prices. The Board has also introduced "comprehensive" transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than two weeks after trade date.<sup>3</sup>

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that a municipal security is "frequently traded" for purposes of the T+1 transparency report. The proposed rule change would lower the threshold from four to three trades per day. By lowering the threshold, the proposal would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. The present report, with a threshold of four or more trades per day, includes an average of 11,600 trades in 1,100 different issues, with a total par value of about 3.9 billion dollars. Under the proposed threshold, the report is expected to include an average of 14,400 trades in 2,600 issues, with a total par value of about 5.2 billion dollars. This represents a 24 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 33 percent increase in par value reported.<sup>4</sup>

The enhanced Daily Transaction Report with the three-trade threshold will replace the current report and will be available each day to subscribers via

<sup>3</sup> The first comprehensive report was introduced in October 2000 and listed all trades after a one month delay. The latest comprehensive report began operation in November 2001 and has a two-week delay. See Release No. 34-44894, 66 FR 51485 (October 9, 2001).

<sup>4</sup> These data are based upon market activity from April 1, 2001 through July 31, 2001.

the Internet.<sup>5</sup> Subscribers to the current Service receive the report free of charge, and their subscriptions will continue with implementation of the proposed Service. New subscriptions will be available free to parties who sign a subscription agreement. In addition, recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

### II. Summary of Comments

The Commission received seven comment letters, from two persons, on the proposal.<sup>6</sup> One of the seven comment letters expressed support for the forgoing proposed rule change. The other six comment letters opposed the proposal.

The comment letter received from TBMA, commends the MSRB's proposed initiative as a mechanism to increase transparency in the municipal securities market.<sup>7</sup> The letter expresses that decreasing the threshold from four to three trades will provide more reliable indicators of market price while avoiding the dissemination of misleading prices from isolated transactions. However, the letter cautioned that reporting isolated trades, bonds that trade only once or twice on a given day, may require greater MSRB evaluation.

The six comment letters received from Municipalbonds.com criticized the MSRB's proposed rule change as ineffective. In general, the letters from Municipalbonds.com expressed that more attention should be given to the price reporting system by releasing all information, including identities, which correlates with the trade.<sup>8</sup> The first comment letter received from Municipalbonds.com stated that more transaction information is "useless" if the daily transaction reports "are not being ruled on, watched or utilized by appropriate oversight or enforcement

<sup>5</sup> The enhanced report will be available to subscribers as soon as practical after SEC approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

<sup>6</sup> See letter from John M. Ramsey, Vice President and Senior Regulatory Counsel, The Bond Market Association ("TBMA"), to Jonathan G. Katz, Secretary, Commission, dated April 24, 2002; three electronic letters from Kevin Olson, Municipalbonds.com, to SEC Commissioners, dated April 19, 2002; electronic letter from Kevin Olson, Municipalbonds.com, to Commissioners, dated April 11, 2002; and two electronic letters from Kevin Olson, Municipalbonds.com, dated April 10, 2002.

<sup>7</sup> See letter from TBMA, note 6, *supra*.

<sup>8</sup> See letters from Municipalbonds.com, note 6, *supra*.

<sup>8</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.