

environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

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

CBOE 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.

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

The Exchange neither solicited nor received comments on the proposal.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>20</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>21</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that waiving the 30-day operative delay would prevent the expiration of the pilot programs on November 2, 2012, prior to the

extension of the pilot program becoming operative. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>22</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-102 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-102. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-CBOE-2012-102 and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-27290 Filed 11-7-12; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68134; File No. SR-MSRB-2012-08]

#### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Amendments to Streamline New Issue Information Submission Requirements Under MSRB Rules G-32 and G-34**

November 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 23, 2012, the Municipal Securities Rulemaking Board ("MSRB") 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 MSRB. 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 a proposed rule change consisting of amendments to Rules G-8, on books and records, G-14 RTRS Procedures, G-32, on disclosures in connection with primary offerings, G-34, on CUSIP numbers, new issue, and market information requirements, and the Electronic Municipal Market Access

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</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.

(EMMA®)<sup>3</sup> system facility (the “proposed rule change”). The MSRB requested an effective date for the proposed amendments no later than May 6, 2013, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date.

The text of the proposed rule change is available on the MSRB’s Web site at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx), at the MSRB’s principal office, and at the Commission’s Public Reference Room.

## 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

The proposed rule change amends Rules G–32 and G–34 to allow underwriters to satisfy certain of their submission requirements under Rule G–32 in connection with new issues of municipal securities by their submission of data, pursuant to Rule G–34, to the New Issue Information Dissemination Service (“NIIDS”) operated by the Depository Trust and Clearing Corporation (“DTCC”). In addition, the proposed rule change revises deadlines for the submission of data to NIIDS, removes certain exceptions from the NIIDS submission requirements under Rule G–34 for certain short term instruments, modifies the EMMA system to include certain elements of the NIIDS data on the EMMA Web site, and eliminates language describing auction rate securities as having a short “effective maturity,” as further described below under “Summary of Proposed Rule Change” and under “Discussion of Comments.”

#### Background

Rule G–32 requires underwriters to submit selected information about most new issues of municipal securities to the MSRB by completing electronic Form G–32 through EMMA’s Primary Market Disclosure Service. This information includes, among other items, the issuer name and issue description for the new issue and, for each maturity of the new issue, the CUSIP numbers, principal amounts and initial offering prices or yields. Separately, Rule G–34 requires underwriters for most new issues to submit comprehensive information to NIIDS. Information required to be submitted to NIIDS generally includes all of the information required for dealers to produce a “when, as and if issued”<sup>4</sup> customer trade confirmation and also includes many of the same items of information included in Form G–32.

*New Issue EMMA Submission Requirements Under Rule G–32.* EMMA is an information facility of the MSRB for receiving electronic submissions of official statements, initial offering prices and other information about new issues as well as on-going municipal securities disclosure and other key documents and related information. EMMA makes such documents and information, together with trade price and interest rate information, available to the public at no charge on an Internet Web site or by paid subscription. The submission of data under Rule G–32 to EMMA’s Primary Market Disclosure Service in connection with new issues is required to be commenced by no later than the end of the day of first execution of transactions in the offered municipal securities.<sup>5</sup> The submission of

<sup>4</sup> The term, “when, as and if issued” is used to describe the time period in the life of a new issue of municipal securities from the original date of the sale by the issuer to the delivery of the securities to, and payment by, the underwriter. Sales made during the “when, as and if issued” period (also called the “when-issued” period”) are subject to issuance of the securities.

<sup>5</sup> Under Rule G–32(b)(vi)(C)(1) and Section 2.6.2 of the EMMA Dataport Manual (Information by the Date of First Execution of Transactions), underwriters are required to initiate the Form G–32 submission process by no later than the date of first execution of transactions in securities sold in the offering by submitting certain issue-specific information about the new issue. “Date of first execution” is defined in Rule G–32(d)(xi) as: “the date on which the underwriter executes its first transactions with a customer or another broker, dealer or municipal securities dealer in any security offered in a primary offering; provided that, for offerings subject to Rule G–34(a)(ii)(C), ‘date of first execution’ shall mean the date corresponding to the Time of First Execution as defined in Rule G–34(a)(ii)(C)(1)(b); further provided that, solely for purposes of this rule, the date of first execution shall be deemed to occur by no later than the closing date.”

documents relating to issues of municipal securities, including official statements or preliminary official statements (if applicable), and of certain additional items of information, is subject to other submission deadlines as outlined in Rule G–32.<sup>6</sup>

*New Issue NIIDS Submission Requirements Under Rule G–34.* NIIDS is a centralized system for collecting from underwriters and disseminating to market participants standardized electronic information describing new issue securities. It was developed to ensure that all market participants have access to information necessary for processing transactions once the underwriter executes its first transactions in the new issue. The information submitted by underwriters to NIIDS, required to be completed by no later than two hours after Time of Formal Award<sup>7</sup> for most new issues of municipal securities,<sup>8</sup> is disseminated in real time to DTCC participants and other subscribers, such as information vendors. Submissions to NIIDS also provide a mechanism for underwriters to communicate the Time of Formal Award and Time of First Execution<sup>9</sup> to market participants that may trade in the new issue to promote orderly trade execution and processing on the first day of trading in a new issue. Consistent communication of these events ensures that all market participants have sufficient data to process and time to prepare pending trades in new issues for execution, real-time trade reporting<sup>10</sup>

<sup>6</sup> Securities 2.6.4 and 2.6.5 of the EMMA Dataport Manual set out the basic timeframes for submitting documents and information to EMMA in connection with a new issue.

<sup>7</sup> “Time of Formal Award” is defined in Rule G–34(a)(ii)(C)(1)(a) as: “for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award.”

<sup>8</sup> Rule G–34(a)(ii)(C) currently provides exceptions to the submission requirements for certain short-term instruments, including variable rate instruments, auction rate products and commercial paper. In addition, this requirement does not apply to new issues that do not meet the eligibility criteria for CUSIP number assignments or that consist of municipal fund securities (such as interests in 529 college savings plans) under the general exemption provided in Rule G–34(d).

<sup>9</sup> “Time of First Execution” is defined in Rule G–34(a)(ii)(C)(1)(b) as: “the time the underwriter plans to execute its first transaction [sic] in the new issue. The underwriter shall designate a Time of First Execution that is no less than two hours after all information required by paragraph (a)(ii)(C) has been transmitted to the new issue information dissemination system.”

<sup>10</sup> “Real-time trade reporting” refers to the reporting of certain information about each

<sup>3</sup> EMMA is a registered trademark of the MSRB.

and sending of when-issued customer confirmations.

*Planned Integration of EMMA and NIIDS New Issue Submission Requirements.* The MSRB launched EMMA as a pilot on March 31, 2008.<sup>11</sup> On September 30, 2008, amendments to Rule G-34 became effective that instituted the requirement for underwriters to provide new issue information to NIIDS.<sup>12</sup> During the early stages of planning for EMMA, the MSRB had planned on integrating into EMMA's Primary Market Disclosure Service the NIIDS data submitted by underwriters under Rule G-34 for the purpose of also fulfilling the data submission requirements under Rule G-32 and making such information available to the public through the EMMA Web site. Due to divergent development schedules and limited opportunities to ensure effective interoperability between the two systems, the Primary Market Disclosure Service was launched on June 1, 2009 requiring a separate submission of new issue data to EMMA through Form G-32, although at that time the MSRB continued to plan for future integration of the submission processes under Rules G-32 and G-34.<sup>13</sup>

The MSRB believes there would be significant benefits in integrating the NIIDS data into the EMMA submission process. While the information required to be submitted under Rule G-32 is less extensive than the information required for a NIIDS submission pursuant to Rule G-34, re-keying information under both Rules G-32 and G-34 is time consuming and this duplication of effort may increase the possibility of error. In addition to reducing the submission burden on underwriters, elimination of this duplicative data entry would result in improved data quality on EMMA and throughout the marketplace. It would allow both underwriters and enforcement agencies to concentrate their compliance activities on ensuring exacting data submissions through this single pipeline through which data would flow uniformly to EMMA as well

as to other market data vendors receiving the NIIDS subscription feed.

The integration of the NIIDS data into the EMMA submission process also would accelerate the availability of Form G-32 data on EMMA by displaying such information in real time upon receipt from NIIDS by no later than two hours after the Time of Formal Award as provided under Rule G-34, rather than by the close of business on the date of first execution as currently provided under Rule G-32. In particular, use of the NIIDS data to populate EMMA will allow for more rapid intra-day, rather than end of day, dissemination of the maturity schedule, interest rates and initial offering prices<sup>14</sup> for new issues within two hours after the Time of Formal Award. Furthermore, additional NIIDS data elements not currently available through EMMA, such as the Time of Formal Award and Time of First Execution as announced by the underwriter, would be displayed on EMMA. To enhance transparency for a broader scope of new issues of municipal securities, the MSRB is also proposing to eliminate exceptions under Rule G-34 for submitting data for certain new issues to NIIDS.

#### Summary of Proposed Rule Change

The proposed rule change revises Rule G-32 to provide that an underwriter's obligations to submit data about a new issue under that rule would be fulfilled through submission of such data through NIIDS as required pursuant to Rule G-34. Data for certain types of offerings not required to use NIIDS (as described below) would continue to be subject to existing Rule G-32 data submission requirements. In addition, certain data elements that are not included in NIIDS, such as underwriting spread (if not included in the official statement), the existence of a continuing disclosure undertaking and the timing for issuer submission of annual financial information, would be required to be submitted to EMMA pursuant to existing timeframes set forth in Rule G-32 and the EMMA Dataport Manual.

Rule G-34 currently requires that information about most new issues of municipal securities be submitted to NIIDS by no later than two hours following the Time of Formal Award of a new issue. Rule G-34 currently

exempts certain types of short-term instruments (including variable rate instruments, auction rate products, and commercial paper), as well as municipal fund securities (such as interests in 529 college savings plans) and issues ineligible for CUSIP number assignment. The proposed rule change revises Rule G-34 to remove the exception for underwriters to submit to NIIDS information about short-term instruments such as variable rate instruments, auction rate products and notes maturing in less than nine months, but would retain this exception for commercial paper issues, municipal fund securities and issues ineligible for CUSIP number assignment. The proposed rule change adds a narrow exception from the requirement to provide a minimum of two hours advance notice of the planned Time of First Execution for offerings of variable rate instruments with a planned settlement cycle of one day or less.

The proposed rule change revises the EMMA facility by adding to the EMMA display and to the EMMA primary market subscription the Time of First Execution and Time of Formal Award.

In addition, the proposed rule change includes amendments to Rule G-8 to conform recordkeeping requirements to amended Rules G-32 and G-34, and amendments to the Rule G-14 RTRS Procedures and Rules G-32 and G-34 to make certain non-substantive technical changes. The technical amendments to Rule G-32 correct a cross-reference to Exchange Act Rule 15c2-12, correct a mis-numbered paragraph defining the term "obligated person" and eliminate section (e), which operated as a transitional provision in June 2009 from the former pre-EMMA official statement submission process under former Rule G-36 to the EMMA-based submission process under current Rule G-32. The technical amendments to Rule G-34 improve the organization of certain provisions of the rule.

Finally, the technical amendments to section (a)(ii)(B) of the Rule G-14 RTRS Procedures under Rule G-14 revise language in such RTRS Procedures that is parallel to the language regarding short-term instruments that is being removed from Rule G-34 by the amendments described above. Such amendments would more clearly describe the types of securities to which the end-of-day RTRS reporting exception for short-term instruments applies and also eliminate language describing auction rate securities as having a short "effective maturity." The MSRB believes that auction rate securities should not be characterized as having an effective short-term maturity

purchase and sale transaction effected in municipal securities to the MSRB's Real-Time Transaction Reporting System ("RTRS"), as prescribed by Rule G-14, Rule G-14 RTRS Procedures and the RTRS Users Manual.

<sup>11</sup> See Release No. 34-57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR-MSRB-2007-06) (November 15, 2007).

<sup>12</sup> See Release No. 34-57750 (May 7 [sic], 2008), 73 FR 25815 (May 7, 2008) (File No. SR-MSRB-2007-08) (November 27, 2007).

<sup>13</sup> See MSRB Notice 2009-07 (March 23, 2009), in which the MSRB noted that it would advise market participants of any future development of a functionality providing for the use of NIIDS data to fulfill Rule G-32 information submission requirements.

<sup>14</sup> Initial offering prices or yields currently must be, and would continue to be, disclosed for all maturities, including those otherwise designated as "not reoffered," through both EMMA and NIIDS. See Release No. 34-67908 (September 21, 2012), 77 FR 59427 (September 27, 2012) (File No. SR-MSRB-2012-06) (June 28, 2012).

and has previously noted that, unlike other short-term municipal securities with long-term maturity dates and short-term interest rate reset periods (such as variable rate demand obligations), auction rate securities generally do not have “put” features or liquidity facilities that allow holders to tender their securities back to an issuer-appointed representative on a periodic basis.<sup>15</sup> Thus, the MSRB is eliminating the use of the term “effective maturity” in the context of auction rate securities in order to avoid any potential implication that holders of auction rate securities have assurances of liquidity on a short-term basis.

#### Effective Date of Proposed Rule Change

The MSRB requested an effective date for the proposed amendments no later than May 6, 2013, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date.

#### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB’s rules shall:

Be 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 and municipal financial

products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act. There will be significant benefits in integrating the NIIDS data into the EMMA submission process that will assist in removing impediments to and perfecting the mechanism of a free and open market, and that will also improve protections to all market participants. The current requirement to re-key significant amounts of information under both Rules G–32 and G–34 is time consuming and this duplication of effort may increase the possibility of error. In addition to reducing the submission burden on underwriters, elimination of this duplicative data entry will result in improved data quality on EMMA and throughout the marketplace. It will allow both underwriters and enforcement agencies to concentrate their compliance activities on ensuring exacting data submissions through this single pipeline through which data would flow uniformly to EMMA as well as to other market data vendors receiving the NIIDS subscription feed.

The integration of the NIIDS data into the EMMA submission process will also accelerate the availability of Form G–32 data on EMMA by displaying such information in real time upon receipt from NIIDS, which will occur by no later than two hours after the Time of Formal Award as provided under Rule G–34, rather than by the close of business on the date of first execution as currently provided under Rule G–32. Furthermore, additional NIIDS data elements not currently available through EMMA, such as the Time of Formal Award and Time of First Execution as announced by the underwriter, will be displayed on EMMA.

Finally, the proposed rule change eliminates exceptions under Rule G–34 for submitting data for certain new issues to NIIDS. Thus, enhanced real-time access to primary market data would become available to the marketplace, both through NIIDS data disseminated by DTCC to information vendors and EMMA data disseminated by the MSRB to market participants and the general public, for a broader scope of new issues of municipal securities.

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all dealers that

serve as underwriters of new issues of municipal securities. The enhanced and more timely information flow resulting from the proposed rule change would make such information available to all persons on an equal and non-discriminatory basis.

The marketplace and the general public would realize the substantial benefits of more prompt, more complete and more accurate information about new issue municipal securities, resulting in greater marketplace efficiency that enhances liquidity and the quality of pricing. In addition, the proposed rule change would reduce the burden on dealers that serve as underwriters for new issues of municipal securities. Such dealers would benefit from the reduced burden of significantly diminished levels of duplicative data entry into two separate information systems—including the burden of entering such data and of undertaking appropriate quality control—with only a minimal, one-time burden of reviewing and, if necessary, making minor modifications to their internal policies and procedures with respect to data submissions under MSRB rules. In addition to the reduced burden to dealers resulting from the more efficient use of dealer resources to ensure the accuracy of data submissions through this single pipeline, the resultant improvement in data quality upon initial submission would reduce the burden of making corrections at a later time when errors are detected by market participants and would reduce the incidence of potential problems with secondary market activity that can arise from inaccuracies in the indicative data used by market participants to price and process transactions.

Some underwriters of new issues bearing short-term interest rates previously exempted from the NIIDS submission requirements under Rule G–34 would be required to modify their new issue information dissemination processes to use NIIDS for such dissemination, rather than the currently permissible use of other means of announcing relevant new issue information promptly in a manner reasonably designed to reach market participants that may trade the new issue. Such underwriters, however, have not previously been exempted from the EMMA submission requirements under Rule G–32, and the proposed rule change would provide for much of the data currently required to be provided through EMMA under Rule G–32 to instead be provided through NIIDS under Rule G–34. Thus, such underwriters would realize a reduced burden of compliance with Rule G–32

<sup>15</sup> See MSRB Notice 2008–09 (February 19, 2008), in which the MSRB published an alert regarding investor protection concerns arising in the market for auction rate securities after widespread auction failures began to occur at the beginning of 2008. The MSRB also published educational information regarding this key difference in the EMMA Education Center upon launch of the EMMA pilot on March 31, 2008, which states: “An important distinction between auction rate securities and variable rate demand obligations is that investors in auction rate securities do not have a ‘put’ right. Thus, there is no assurance that the investor will be able to sell its holdings during an auction. Instead, investors are dependent on the success of the auction process. Among many other factors, the pool of purchase bids that may be entered can vary widely from auction to auction, and bids entered by broker-dealers, banks and other market professionals that have the effect of supporting market liquidity, if permitted, generally are not required under the legal documents and therefore investors cannot be assured that such bids will be entered in any particular auction. See <http://emma.msrb.org/EducationCenter/WhatAreBonds.aspx>. The MSRB thereafter launched its Short-term Obligation Rate Transparency (“SHORT”) system on January 30, 2009 pursuant to which certain key information regarding periodic auctions for auction rate securities is made available to the public through EMMA.”

while facing a potential incremental change in the burden under Rule G–34. Whether such incremental change in burden under Rule G–34 is an increase or decrease would depend on whether, and to what extent, using NIIDS to disseminate new issue information is more or less burdensome than the alternative means currently used by such underwriters to comply with Rule G–34 and the procedures and processes they currently maintained for using two or more separate data submission processes for new issues rather than a single process through NIIDS. If and to the extent that such balance results in a net burden rather than a net benefit, the bulk of such net burden likely would occur as up-front costs of modifying procedures and likely would be minimal on an ongoing basis.

On balance, the MSRB believes that the benefits of the proposed rule change greatly exceed any potential increased burden resulting therefrom.

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

On April 10, 2012, the MSRB requested comment on a proposal to streamline new issue information submission requirements under Rules G–32 and G–34 by allowing underwriters to satisfy certain of their submission requirements under Rule G–32 by their submission of data to NIIDS pursuant to Rule G–34.<sup>16</sup> Specifically, the MSRB sought comment on whether: (i) The timeframe under Rule G–32 for submission of data for issues not subject to the NIIDS requirement or of data elements not included in NIIDS should be accelerated to coincide with the Time of First Execution, which typically would be within two-to-four hours after the Time of Formal Award;<sup>17</sup> (ii) removing the exception in NIIDS for certain short-term instruments would present compliance challenges; (iii) additional items of information available through NIIDS that are not currently available through EMMA should be added to the EMMA display; (iv) to extend the business day for purposes of determining timeframes for compliance with Rule G–34 deadlines;<sup>18</sup> or (v) to shorten the time

after the formal award occurs for first executions of transactions and other related timeframes under Rule G–34. The MSRB received comment letters from the Securities Industry and Financial Markets Association (“SIFMA”) and TD Securities (USA) LLC (“TD”).

*Discussion of Comments*

SIFMA stated that it “believe[s] this move towards straight-through processing will be beneficial for market participants by reducing transaction costs and increasing data integrity.” TD stated that it “welcome[d] the effort to have one centralized system and one pass in establishing the information necessary to satisfy the regulations.” The MSRB discusses additional comments from these commenters below.

*Accelerating the deadline for completing submission of Form G–32 data not eligible to be submitted to NIIDS.* While no written comments were received on this question, the MSRB understands from conversations with various industry participants that accelerating the submission requirements for Form G–32 data not eligible to be submitted to NIIDS may present compliance challenges for some industry participants, particularly those that make manual submissions of information to NIIDS and Form G–32. Thus, the MSRB determined not to accelerate such timeframes but instead retain the existing timeframe for submission of those Form G–32 data elements not able to be populated using NIIDS data. Similarly, for those securities that are not eligible for submission to NIIDS and therefore would continue to be submitted through Form G–32, the MSRB is retaining all existing timeframes for submission.

*Removing the exception for certain short term instruments from the data submission requirements under Rule G–34.* SIFMA noted that while eliminating the exception under Rule G–34 for short term notes with maturities of nine months or less would not be a challenge, eliminating the exception for variable rate demand obligations (“VRDOs”) would present operational challenges. SIFMA noted that daily and weekly VRDOs are usually priced, allocated, ticketed and settled on the same or next day. Removing the exception for VRDOs under Rule G–34 would subject VRDOs to deadlines for both data submission and Time of First Execution under Rule G–34. As SIFMA noted, issuers and underwriters already typically agree in advance to a Time of Formal Award to avoid DTCC disincentive fees for short settlements,

which means that underwriters generally are able to comply with the data submission requirements for trade eligibility under Rule G–34. Based on additional feedback from SIFMA, the larger concern results from the fact that purchasers of VRDOs require same day cash settlement within a short period of time following time of pricing and formal award and, as a result, the mandatory minimum two hour time period between Time of Formal Award and Time of First Execution required by Rule G–34 would present operational challenges to ensure same day cash settlement.

The purpose of the required two hour advanced notification timeframe between disseminating NIIDS data and the announced Time of First Execution is to ensure that dealers with pending trades in new issues are able to receive and enter into trade processing systems NIIDS data before the first transactions in the new issue are executed. For VRDOs, there typically are not multiple dealers with pending transactions in new issues, so the two hour advanced notification timeframe is not as important as for other types of new issues with a broad distribution. However, the MSRB believes that it is important that as many types of securities as possible benefit from the centralized data collection and dissemination of information provided by NIIDS. Accordingly, the proposed rule change removes the exception for short-term instruments (including VRDOs and auction rate securities but not including commercial paper) from Rule G–34 with respect to the requirement to submit information to NIIDS and announce the Time of Formal Award and Time of First Execution, which can be done within the existing timeframes of typical VRDO offerings. However, the proposed rule change also adds a narrow exception from the requirement to provide a minimum two hours of advance notice of the planned Time of First Execution for offerings of variable rate instruments with a planned settlement cycle of one day or less.

*Dissemination of Additional NIIDS information on EMMA.* SIFMA supported the dissemination of the Time of First Execution and Time of Formal Award on EMMA but suggested that the addition of more NIIDS data to EMMA be carefully considered to avoid obscuring important data. SIFMA suggested that those that require additional NIIDS data consider a subscription feed for such data. The MSRB agrees that careful selection of NIIDS data is necessary and will consider this issue as it reviews the full range of NIIDS data for potential

<sup>16</sup> See MSRB Notice 2012–19 (April 10, 2012).

<sup>17</sup> Rule G–34 generally requires that underwriters submit required data to NIIDS within two hours of the Time of Formal Award, and that such NIIDS data be disseminated to the marketplace for at least two hours prior to the Time of First Execution.

<sup>18</sup> Rule G–34 currently provides that only the hours between 9:00 a.m. and 5:00 p.m. Eastern Time on a Business Day for the MSRB's Real-time Transaction Reporting System (RTRS) are used for purposes of the timeframes set out in the rule.

inclusion on EMMA at a future date. The MSRB determined that the only new data elements from NIIDS to be added to the EMMA display and to the EMMA primary market subscription product at this time are Time of First Execution and Time of Formal Award.

*Extending Rule G–34 Business Day hours.* SIFMA said that, while expanding the 9:00 a.m. to 5:00 p.m. Eastern timeframe for the deadlines in Rule G–34 may not be problematic for dealers operating in the Eastern Time zone, expanding these hours could cause significant staffing challenges to those dealers operating in other time zones. SIFMA suggested the MSRB not alter the existing 9:00 a.m. to 5:00 p.m. Eastern timeframe in Rule G–34. The MSRB decided against changing the Rule G–34 Business Day hours.

*Shortening advanced notification timeframe between the submission of all data to NIIDS and the Time of First Execution.* TD said that the two hour window between the time of disseminating NIIDS data and first executions was “tough enough” especially for smaller shops that were limited in staff, and that shortening the time period would create undue pressure and add little to transparency. SIFMA stated that, because most dealers receive the NIIDS data from one or more information providers, the two hour dissemination period is frequently needed to integrate the data into their own systems, irrespective of the type of underwriting. However, SIFMA suggested that, where a dealer has submitted data to NIIDS to make an issue “trade eligible” between 3:00 p.m. and 5:00 p.m. on a trading day, Rule G–34’s current carry-forward of the two hour dissemination period through to the first hours of the following day may not be necessary because the dealer has been able to disseminate and integrate the data through information providers overnight. SIFMA therefore suggested that underwriters of any issue that is made “trade eligible” between 3:00 p.m. and 5:00 p.m. Eastern Time should be permitted to elect to waive the two business hour dissemination period and set the Time of First Execution to be 9:00 a.m. Eastern Time the following morning.<sup>19</sup> SIFMA noted that this option would enable dealers to reduce the risk of carrying these securities.

Recognizing these operational challenges, the MSRB decided against

shortening the required two hour minimum period between the time an underwriter disseminates NIIDS information and the Time of First Execution that can be set by an underwriter. However, the MSRB decided that underwriters setting a Time of First Execution for the business day following the day NIIDS data is disseminated should be able to set a Time of First Execution for the following day as early as 9:00 a.m. Eastern Time without having to wait until the full two-hour period has elapsed. Acknowledging that dealers would have sixteen hours between 5:00 p.m. Eastern Time and the earliest possible Time of First Execution at 9:00 a.m. Eastern Time to integrate disseminated NIIDS data and prepare for the underwriter’s announced Time of First Execution, the MSRB believes that it would be appropriate that underwriters wanting to set a Time of First Execution as early as 9:00 a.m. Eastern Time should be able to do so.

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

Within 45 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 or disapprove 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 arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–MSRB–2012–08 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2012–08. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission’s Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2012–08, and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O’Neill,**  
*Deputy Secretary.*

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<sup>19</sup> Currently, an underwriter disseminating NIIDS data at, for example, 4:00 p.m. Eastern Time would not be able to set a Time of First Execution for earlier than 10:00 a.m. Eastern Time the following business day since the two hour advanced notification timeframe must occur between the hours of 9:00 a.m. to 5:00 p.m. Eastern Time.

<sup>20</sup> 17 CFR 200.30–3(a)(12).