

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the rule change will codify the ability of ISE members to use ISE-provided functionality to maintain competitive and liquid quotations.

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

The Exchange 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 Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange 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

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 Exchange 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 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 e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2004-31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-ISE-2004-31. This file number should be included on the subject line if e-mail 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 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 the ISE. 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 publicly available. All submissions should refer to File Number SR-ISE-2004-31 and should be submitted on or before January 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50820; File No. SR-MSRB-2004-06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change To Create Real-Time Transaction Price Service and Propose Annual Subscription Fee

December 8, 2004.

On October 26, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), 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 and Rule 19b-4 thereunder,² a proposed rule change to create the Real-Time Transaction Price Service (the "Service") and propose an annual subscription fee for the Service. The proposed rule change was published for comment in the **Federal Register** on November 4, 2004.³ The Commission received one comment letter regarding the proposal.⁴ On November 30, 2004, the MSRB filed a response to the comment letter.⁵ This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB⁶ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.⁷ Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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, to remove impediments to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50605 (October 29, 2004), 69 FR 64346 (November 4, 2004) ("Notice").

⁴ See e-mail letter from Al Adler, CEO, Munibond.com, to rule-comments@sec.gov, dated November 4, 2004 ("Mr. Adler's Letter").

⁵ See letter from Jill C. Finder, Assistant General Counsel, MSRB, to Martha M. Haines, Chief, Office of Municipal Securities, Division of Market Regulation, Commission, dated November 30, 2004 ("MSRB's Response Letter").

⁶ In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-4(b)(2)(C).

⁷ 17 CFR 200.30-3(a)(12).

and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.⁸ In particular, the Commission finds that the proposed rule change will increase transparency and facilitate the fair pricing of municipal securities transactions.

Mr. Adler's Letter expressed concerns about the pricing of the Real-Time Transaction Price Service, stating that the Service will increase the abuses and inequalities in the municipal bond market and will be of immediate benefit to large bond dealers at the expense of small investors. Mr. Adler stated that the delivery fee was drastically inflated to discourage small bond investors from using the Service and that the MSRB should cut the fee for the Service as far as possible, perhaps even making it free, if the MSRB wants to help the small municipal bond investor have any degree of information parity with the larger firms.

The MSRB's Response Letter states that the MSRB's intent is to achieve the widest possible dissemination of the real-time data, with the ultimate goal of making the data available to investors for free or at a very modest cost. The MSRB stated that it strongly encourages the redistribution of data obtained through the Real-Time Transaction Reporting System, and that, toward this end, subscribers to the Service will be allowed to re-disseminate transaction data to an unlimited number of their own customers or clients at no additional charge. The MSRB further stated that by not charging for or restricting re-dissemination of the transaction data, the MSRB wishes to encourage information vendors—and various other entities that make securities data available to members of the securities industry and the public—to use the transaction data in their products and services. Finally, the MSRB stated that, through this approach, the MSRB anticipates that it will be possible for a typical individual investor to obtain the transaction data that is relevant to his or her investments for free or at a very modest cost.

After careful consideration, the Commission believes the proposed annual subscription fee for the Real-Time Transaction Price Service satisfies the statutory standards, and that the proposed rule change will increase transparency and facilitate the fair pricing of municipal securities transactions. For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-MSRB-2004-06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4-3635 Filed 12-13-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50822; File No. SR-NASD-2004-175]

Self Regulatory Organizations, Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Repeal of Existing NASD Short Sale Rules in Light of SEC Regulation SHO

December 8, 2004.

Pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 30, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

NASD is proposing to repeal NASD Rule 3110(b)(1), Rule 3210, Rule 3370(b) and Rule 11830 in light of the requirements of the SEC's new short sale regulation, Regulation SHO under the Act. Below is the text of the proposed rule change. Proposed deletions are in brackets.

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⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(3).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4

3110. Books and Records

- (a) No change.
- (b) Marking of Customer Order Tickets.

[(1) A person associated with a member shall indicate on the memorandum for the sale of any security whether the order is "long" or "short," except that this requirement shall not apply to transactions in debt securities. An order may be marked "long" if (A) the customer's account is long the security involved or (B) the customer owns the security and agrees to deliver the security as soon as possible without undue inconvenience or expense.]

[(2)] A person associated with a member shall indicate on the memorandum for each transaction in a non-Nasdaq security, as that term is defined in the Rule 6700 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information.

- (c) No change.

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3210. *Reserved.* [Securities "Failed to Receive" and "Failed to Deliver"]

[(a) No member, or person associated with a member, shall sell a security for his own account, or buy a security as a broker for a customer (except exempt securities), if,]

[(1) in respect to domestic securities, he has a fail to deliver in that security 60 days old or older; or]

[(2) in respect to foreign securities, he has a fail to deliver in that security 90 days old or older (except American Depositary Receipt and Canadian securities, which shall be subject to the provisions of subparagraph (1)).]

[(b) Pursuant to the Rule 9600 Series, for good cause shown and in exceptional circumstances, the Association may exempt a member or a person associated with a member from the provisions of this Rule.]

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3370. [Prompt Receipt and Delivery of Securities] *Purchases*

[(a) *Purchases*].

No member or person associated with a member may accept a customer's purchase order for any security unless it has first ascertained that the customer placing the order or its agent agrees to

⁸ *Id.*