Exchange may be prohibited under Section 17(a) of the Act.

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, investment advisers that are affiliated persons of each other, common directors, and/or common officers, provided, among other requirements, that the transaction is for no consideration other than cash. Applicants state that the relief provided by rule 17a–7 may not be available for the Exchange because the Exchange will involve consideration other than cash (*i.e.,* Shares of the Mutual Funds). Applicants also state that the Unregistered Funds may be deemed to be affiliated with the Mutual Funds for reasons other than those set forth in rule 17a–7.

4. Rule 17a–8 exempts certain transactions (including mergers, consolidations or purchases or sales of substantially all of the assets of a company) between registered investment companies and eligible unregistered funds, as defined in rule 17a–8 (''Eligible Unregistered Fund''). Applicants state that the relief provided by rule 17a–8 is not available for the Exchange because the Unregistered Funds are not registered investment companies or Eligible Unregistered Funds, and the Exchange does not involve substantially all of the assets of the Unregistered Funds.[1]

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants submit that the terms of the Exchange satisfy the standards set forth in section 17(b) of the Act. Applicants state that the board of the Trust, including a majority of the trustees who are not interested persons as defined in section 2(a)(19) of the Act, found that participation in the Exchange is in the best interests of each Mutual Fund and that the interests of the existing shareholders of each Mutual Fund will not be diluted as a result of the Exchange. Applicants state that the Exchange will comply with the terms of paragraphs (a) (other than the cash payment requirement) through (g) of rule 17a–7 and the provisions of rule 17a–8 (as those provisions apply to the merger of an Eligible Unregistered Fund with a registered investment company). No brokerage commissions, fees (except for customary transfer fees, if any) or other remuneration will be paid by the Mutual Funds or the Unregistered Funds in connection with the Exchange.

[1] Although the Exchange will involve substantially all of the assets of MF's Common Stock Fund and Intermediate Bond Fund and MRT's Bond Fund and Large Cap Blend Fund, these entities do not have an existence separate from the Unregistered Funds.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Exchange will comply with the terms of paragraphs (a) (other than the cash payment requirement) through (g) of rule 17a–7 and the provisions of rule 17a–8 (as those provisions apply to the merger of an Eligible Unregistered Fund with a registered investment company).

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–14675 Filed 6–28–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49902; File No. SR–MSRB–2004–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Proposed Amendments to the MSRB's Rule G–12(f) on Automated Comparison and G–14 on Transaction Reporting, and to the Implementation of a Facility for Real-Time Transaction Reporting and Price Dissemination

June 22, 2004.

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 June 2, 2004, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') 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 the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The MSRB's proposed rule change relates to Rule G–14, on transaction reporting, Rule G–12(f), on automated comparison, and the implementation of a facility for real-time transaction reporting and price dissemination (the ''Real-Time Transaction Reporting System'' or ''RTRS''). Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Rule G–12. Uniform Practice

(a)–(e) No change.

(f) Use of Automated Comparison, Clearance and Settlement Systems.

(i) Notwithstanding the provisions of sections (c) and (d) of this rule, [a] *an Inter-Dealer T*[t]ransaction *E*[e]ligible for [automated trade] *C*[c]omparison by a *C*[c]learing *A*[a]gency *R*[r]egistered with the [Securities and Exchange] Commission (registered clearing agency) shall be compared through a registered clearing agency. Each party to such a transaction shall submit or cause to be submitted to a registered clearing agency all information and instructions required from the party by the registered clearing agency for automated comparison of the transaction to occur. *Each transaction effected during the RTRS Business Day shall be submitted for comparison within 15 minutes of the Time of Trade, unless the transaction is subject to an exception specified in the Rule G–14 RTRS Procedures paragraph (a)(ii), in which case it shall be submitted for comparison in the time frame specified in the Rule G–14 RTRS Procedures paragraph (a)(ii). Transactions effected outside the hours of an RTRS Business Day shall be submitted no later than 15 minutes after the beginning of the next RTRS Business Day.* In the event that a transaction submitted to a registered clearing agency for comparison in accordance with the requirements of this paragraph (i) shall fail to compare, the party submitting such transaction shall*, as soon as possible,* use the [post-original-comparison] procedures provided by the registered clearing agency in connection with such transaction until such time as the transaction is compared or final notification of a failure to compare the transaction is received from the contra-party. *A broker, dealer or municipal securities dealer (''dealer'') that effects inter-dealer transactions eligible for comparison by a clearing agency*

registered with the Commission shall ensure that submissions made against it in the comparison system are monitored for the purpose of ensuring that correct trade information alleged against it is acknowledged promptly and that erroneous information alleged concerning its side of a trade (or its side of a purported trade) is corrected promptly through the procedures of the registered securities clearing agency or the MSRB.

(ii) No change.

(iii) No change.

(iv) Definitions.

(A) ''Inter-Dealer Transaction Eligible for Comparison by a Clearing Agency Registered with the Commission'' means a contract for purchase and sale between one dealer and another dealer, resulting in a contractual obligation for one such dealer to transfer municipal securities to the other dealer involved in the transaction, and which contract is eligible for comparison under the procedures of an automated comparison system operated by a registered clearing agency.

(B) ''Time of Trade'' is defined in Rule G–14 Transaction Reporting Procedures.

(C) The ''RTRS Business Day'' is defined in Rule G–14 RTRS Transaction Reporting Procedures.

Rule G–14. Reports of Sales or Purchases

(a) No change.

(b) Transaction Reporting Requirements.

(i) Each broker, dealer or municipal securities dealer *(''dealer'')* shall report to the Board or its designee information about [its] *each purchase and sale* transaction[s] *effected* in municipal securities to the *Real-time Transaction Reporting System (''RTRS'') in the manner prescribed by Rule G–14 RTRS Procedures and the RTRS Users Manual* [extent required by, and using the formats and within the timeframes specified in, Rule G–14 Transaction Reporting Procedures]. Transaction information collected by the Board under this rule will be used to make public reports of market activity and prices and to assess transaction fees. The transaction information will be made available by the Board to the Commission, securities associations registered under Section 15A of the Act and other appropriate regulatory agencies defined in Section 3(a)(34)(A) of the Act to assist in the inspection for compliance with and the enforcement of Board rules.

(ii) The information specified in the [Transaction Reporting] *Rule G–14 RTRS* Procedures is critical to public reporting of prices for transparency purposes and to the compilation of an audit trail for regulatory purposes. All [brokers, dealers and municipal securities] dealers have an ongoing obligation to report this information promptly, accurately and completely. The [broker, dealer or municipal securities] dealer may employ an agent for the purpose of submitting [customer] transaction information; however the primary responsibility for the timely and accurate submission remains with the [broker, dealer or municipal securities] dealer that effected the transaction. *A dealer that acts as a submitter for another dealer has specific responsibility to ensure that transaction reporting requirements are met with respect to those aspects of the reporting process that are under the Submitter's control. A dealer that submits inter-dealer municipal securities transactions for comparison, either for itself or on behalf of another dealer, has specific responsibility to ensure that transaction reporting requirements are met with respect to those aspects of the comparison process that are under the Submitter's control.*

(iii) To identify its transactions for reporting purposes, each [broker, dealer and municipal securities] dealer shall obtain a unique [executing] broker symbol from the National Association of Securities Dealers, Inc.

(iv) Each dealer shall provide to the Board on Form RTRS information necessary to ensure that its trade reports can be processed correctly. Such information includes the manner in which transactions will be reported, the broker symbol used by the dealer, the identity of and information on any intermediary to be used as a Submitter, information on personnel that can be contacted if there are problems in RTRS submissions, and information necessary for systems testing with RTRS. Information provided on Form RTRS shall be kept current by notifying the MSRB when contact information or other information provided on the form changes.

(v) Testing Requirements.

(A) Prior to submitting transaction data under RTRS Procedures, a dealer must successfully test its ability to interface with RTRS as described in the RTRS Users Manual.

(B) Testing During RTRS Start-Up

(1) Testing facilities will be made available at least six months prior to the announced effective date of these transaction reporting procedures (''Announced RTRS Start-Up Date''). Except as provided in the subparagraph below, each dealer shall be prepared for testing no later than three months prior to the Announced RTRS Start-Up Date and shall either have successfully tested its RTRS capabilities or have scheduled a testing date with the MSRB by that time.

(2) A dealer electing to use only the Web-based trade input method of transaction reporting and that has averaged submissions of five or fewer trades during a one-year period beginning in July 2003 shall be required to test its RTRS capabilities no later than one month prior to the Announced RTRS Start-Up Date.

(vi) The following transactions shall not be reported under Rule G–14:

(A) Transactions in securities without assigned CUSIP numbers;

(B) Transactions in Municipal Fund Securities; and

(C) Inter-dealer transactions for principal movement of securities between dealers that are not inter-dealer transactions eligible for comparison in a clearing agency registered with the Commission.

Rule G–14RTRS [Transaction Reporting] Procedures

[(a) Inter-Dealer Transactions.]

[(i) Except as described in paragraph (ii) of this section (a), each broker, dealer and municipal securities dealer shall report all transactions with other brokers, dealers or municipal securities dealers to the Board's designee for receiving such transaction information. The Board has designated National Securities Clearing Corporation (NSCC) for this purpose. A broker, dealer or municipal securities dealer shall report a transaction by submitting or causing to be submitted to NSCC information in such format and within such timeframe as required by NSCC to produce a compared trade for the transaction in the initial comparison cycle on the night of trade date in the automated comparison system operated by NSCC. Such transaction information may be submitted to NSCC directly or to another registered clearing agency linked for the purpose of automated comparison with NSCC.]

[The information submitted in accordance with this procedure shall include the time of trade execution and the identity of the brokers, dealers, or municipal securities dealers that execute the transaction in addition to the identity of the entities that clear the transaction. If clearing/introducing broker arrangements are used for transactions, the introducing brokers shall be identified as the ''executing brokers.'' If the settlement date of a transaction is known by the broker, dealer or municipal securities dealer, the report made to NSCC also shall

include a value for accrued interest in the format prescribed by NSCC.]

[(ii) A transaction that is not eligible to be compared in the automated comparison system operated by NSCC (because of the lack of a CUSIP number for the security or other reasons) shall not be required to be reported under this section (a). A transaction that is subject to a ''one-sided'' submission procedure in the automated comparison system operated by NSCC shall be reported only by the broker, dealer or municipal securities dealer that is required to submit the transaction information under the one-sided submission procedure.]

[(b) Customer Transactions]

[(i) Each broker, dealer and municipal securities dealer shall report to the Board all transactions with customers effected after March 1, 1998, except as described in paragraph (iii) of this section (b). A broker, dealer or municipal securities dealer shall report a transaction by submitting or causing to be submitted to the Board, by midnight of trade date, the customer transaction information specified in paragraph (ii) of this section (b) in such format and manner specified in the current User's Manual for Customer Transaction Reporting. The broker, dealer or municipal securities dealer shall promptly report cancellation of the trade or corrections to any required data items.]

[(ii) The information submitted in accordance with this procedure shall include: the CUSIP number of the security; the trade date; the time of trade execution; the executing broker symbol identifying the broker, dealer or municipal securities dealer that effected the transaction; a symbol indicating the capacity of the broker, dealer or municipal securities dealer as buyer or seller in the transaction; the par value traded; the dollar price of the transaction, exclusive of any commission; the yield of the transaction; a symbol indicating the capacity of the broker, dealer or municipal securities dealer as agent for the customer or principal in the transaction; the commission, if any; the settlement date, if known to the broker, dealer or municipal securities dealer; a control number, determined by the broker, dealer or municipal securities dealer, identifying the transaction; and a symbol indicating whether the trade has previously been reported to the Board, and, if so, the control number used by the broker, dealer or municipal securities dealer for the previous report.]

[(iii) The following transactions shall not be required to be reported under this section (b):

(A) a transaction in a municipal security that is ineligible for assignment of a CUSIP number by the Board or its designee; and

(B) a transaction in a municipal fund security.]

[(iv) Each broker, dealer and municipal securities dealer effecting customer transactions in municipal securities, including introducing and clearing brokers, shall provide to the Board the name and telephone number of a person responsible for testing that firm's capabilities to report customer transaction information. Each broker, dealer or municipal securities dealer shall test such capabilities in a manner and according to the requirements specified in the current User's Manual for Customer Transaction Reporting. This paragraph (iv) shall take effect July 1, 1997.]

(a) General Procedures.

(i) The Board has designated three RTRS Portals for dealers to use in the submission of transaction information. Transaction data submissions must conform to the formats specified for the RTRS Portal used for the trade submission. The RTRS Portals may be used as follows:

(A) The message-based trade input RTRS Portal operated by National Securities Clearing Corporation (NSCC) (''Message Portal'') may be used for any trade record submission or trade record modification.

(B) The RTRS Web-based trade input method (''RTRS Web Portal'' or ''RTRS Web'') operated by the MSRB may be used for low volume transaction submissions and for modifications of trade records, but cannot be used for submitting or amending inter-dealer transaction data that is used in the comparison process. Comparison data instead must be entered into the comparison system using a method authorized by the registered clearing agency.

(C) The NSCC Real-Time Trade Matching (''RTTM'') Web-based trade input method (''RTTM Web Portal'' or ''RTTM Web'') may be used only for submitting or modifying data with respect to Inter-Dealer Transactions Eligible for Comparison.

(ii) Transactions effected with a Time of Trade during the hours of the RTRS Business Day shall be reported within 15 minutes of Time of Trade to an RTRS Portal except in the following situations:

(A) Syndicate managers, syndicate members and selling group members that effect trades in new issues on the first day of trading at the list offering price shall report such trades by the end of the day on which the trades were executed.

(B) A dealer effecting trades in short-term instruments under nine months in effective maturity, including variable rate instruments, auction rate products, and commercial paper shall report such trades by the end of the RTRS Business Day on which the trades were executed.

(C) A dealer shall report a trade within three hours of the Time of Trade if all the following conditions apply: (1) The CUSIP number and indicative data of the issue traded are not in the securities master file used by the dealer to process trades for confirmations, clearance and settlement; (2) the dealer has not traded the issue in the previous year; and (3) the dealer is not a syndicate manager or syndicate member for the issue. If fewer than three hours of the RTRS Business Day remain after the Time of Trade, the trade shall be reported no later than 15 minutes after the beginning of the next RTRS Business Day. This provision (C) will cease to be effective one year after the Announced RTRS Start-Up Date.

(iii) Transactions effected with a Time of Trade outside the hours of the RTRS Business Day shall be reported no later than 15 minutes after the beginning of the next RTRS Business Day.

(iv) Transaction data that is not submitted in a timely and accurate manner in accordance with these Procedures shall be submitted or corrected as soon as possible.

(v) Information on the status of trade reports in RTRS is available through the Message Portal, through the RTRS Web Portal, or via electronic mail. Trade status information from RTRS indicating a problem or potential problem with reported trade data must be reviewed and addressed promptly to ensure that the information being disseminated by RTRS is as accurate and timely as possible.

(vi) RTRS Portals will be open for transmission of transaction data and status of trade reports beginning 30 minutes prior to the beginning of the RTRS Business Day and ending 90 minutes after the end of the RTRS Business Day.

(b) Reporting Requirements for Specific Types of Transactions.

(i) Inter-Dealer Transactions Eligible for Comparison by a Clearing Agency Registered with the Commission.

(A) Bilateral Submissions: Inter-Dealer Transactions Eligible for Trade Comparison at a Clearing Agency Registered with the Commission (registered clearing agency) shall be reported by each dealer submitting, or causing to be submitted, such

transaction records required by the registered clearing agency to achieve comparison of the transaction. The transaction records also shall include the additional trade information for such trades listed in the Specifications for Real-Time Reporting of Municipal Securities Transactions contained in the RTRS Users Manual.

(B) Unilateral Submissions: For transactions that, under the rules of the registered clearing agency, are deemed compared upon submission by one side of the transaction (unilateral submissions), a submission is not required by the contra-side of the transaction. The contra-side, however, must monitor such submissions to ensure that data representing its side of the trade is correct and use procedures of the registered clearing agency to correct the trade data if it is not.

(ii) Customer Transactions. Reports of transactions with customers shall include the specific items of information listed for such transactions in the Specifications for Real-Time Reporting of Municipal Securities Transactions.

(iii) Agency Transactions With Customers Effected By An Introducing Broker Against Principal Account of its Clearing Broker. Reports of agency transactions effected by an introducing broker for a customer against the principal account of its clearing broker shall include the specific items of information listed in the Specifications for Real-Time Reporting of Municipal Securities Transactions for ''Inter-Dealer Regulatory-Only'' trades.

(c) RTRS Users Manual. The RTRS Users Manual is comprised of the Specifications for Real-Time Reporting of Municipal Securities Transactions, the Users Guide for RTRS Web, Testing Procedures, guidance on how to report specific types of transactions and other information relevant to transaction reporting under Rule G–14. The RTRS Users Manual is located at www.msrb.org and may be updated from time to time with additional guidance or revisions to existing documents.

(d) Definitions.

(i) ''RTRS'' or ''Real-Time Transaction Reporting System'' is a facility operated by the MSRB. RTRS receives municipal securities transaction reports submitted by dealers pursuant to Rule G–14, disseminates price and volume information in real time for transparency purposes, and otherwise processes information pursuant to Rule G–14.

(ii) The ''RTRS Business Day'' is 7:30 a.m. to 6:30 p.m., Eastern Time, Monday through Friday, on each business day as defined in Rule G–12(b)(i)(B).

(iii) ''Time of Trade'' is the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.

(iv) ''Submitter'' means a dealer, or service bureau acting on behalf of a dealer, that has been authorized to interface with RTRS for the purposes of entering transaction data into the system.

(v) ''Inter-Dealer Transaction Eligible for Automated Comparison by a Clearing Agency Registered with the Commission'' is defined in MSRB Rule G–12(f)(iv).

(vi) ''Municipal Fund Securities'' is defined in Rule D–12.

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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 purpose of the proposed rule change is to increase transparency and to enhance the surveillance database and audit trail of transaction data used by enforcement agencies. The proposed rule change contains draft amendments to MSRB rules that would require brokers, dealers and municipal securities dealers (''dealers'') to report transactions in municipal securities to RTRS within 15 minutes of the time of trade execution instead of by midnight on trade date, as is currently required. Upon receipt of this transaction data, RTRS would immediately perform automated error checking and would electronically disseminate prices, providing the municipal securities market with real-time transaction price transparency.

The proposed RTRS facility for real-time collection and dissemination of transaction prices is planned to become operational in January 2005, at which time MSRB would begin to disseminate transaction data electronically in real time. MSRB expects to make a second filing on the RTRS facility in the future, stating the date of effectiveness, describing the technical means of data dissemination, and proposing fees to be charged for RTRS data products.

The proposed RTRS facility would replace the existing Transaction Reporting System (TRS), which currently receives and disseminates transaction data in an overnight batch process. The proposed amendments to Rules G–12 and G–14 require dealer participation in RTRS and are designed to ensure that transactions are reported to RTRS in a timely manner. The proposed amendments are described in section (ii) below and the proposed RTRS facility is described in section (iii) below.

(i) *Overview.* 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.[3] The Board implemented a limited transaction reporting facility (the ''Transaction Reporting System'' or ''TRS'') for the municipal securities market in 1995 and has since increased price transparency in the municipal securities market in measured steps.[4]

[3] *See* ''Planned Pilot Program for Publishing Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 13, No. 3 (June 1993) at 3 and ''Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 14, No. 1 (January 1994) at 13.

[4] The MSRB's first public price transparency report, the T+1 Daily Report, was initiated in 1995. It was disseminated daily on the day after trade date and summarized high, low and average inter-dealer prices for issues that met a trading threshold of four or more trades in the inter-dealer market. *See* Release Number 34–34955 (November 9, 1994), 59 FR 59810 (November 18, 1994). In 1998, the MSRB added customer trade data to the report. *See* Rel. No. 34–37998 (November 29, 1996), 61 FR 64782, and Rel. No. 34–40349 (August 20, 1998), 63 FR 45545. In January 2000, the MSRB further enhanced the T+1 Daily Report by publishing individual transaction data (rather than high, low and average prices) for each issue that met the threshold of four or more trades. *See* Rel. No. 34–42241 (December 16, 1999), 64 FR 72123. In October 2000 the MSRB began disseminating a Monthly Comprehensive Report, which lists all municipal securities transactions regardless of frequency of trading. This report covers all trades done during the previous month and includes late-reported trades, inter-dealer trades compared after trade date, and transaction data corrected by dealers after trade date, as well as infrequently traded issues. *See* Rel. No. 34–43426 (October 10, 2000). In October 2001, the MSRB began disseminating a Daily Comprehensive Report of all trades done on a single day two weeks earlier. *See* Rel. No. 34–44894 (October 2, 2001), 65 FR 61367. As the market became familiar with these reports, the MSRB began the process of lowering the trading threshold in the T+1 Daily Report to make more trade data available on a T+1 basis. In May 2002, the MSRB changed the trading threshold for the T+1 Daily Report to three trades. *See* Rel. No. 34–45861 (May 1, 2002), 67 FR 30989. In August 2002, the delay for the Daily Comprehensive Report was changed from two weeks to one week. At the same time, the MSRB

The proposed rule change represents the final stage of the evolution of price transparency in the municipal securities market, which is a system for comprehensive, real-time price dissemination.

The Board believes that a number of benefits to the market will accrue as a result of making real-time price information available, including more efficient pricing and enhanced investor confidence. The MSRB recognizes that, because of the unique features of the municipal securities market, real-time price transparency for municipal securities will not necessarily function in the same manner as in the major equity markets. Since less that one percent of outstanding municipal securities trade on a given day, an investor holding municipal securities often will not be able simply to view ''last sale'' information to obtain an exact market price, as generally can be done for exchange-traded or NASDAQ listed stocks. Nevertheless, real-time prices will provide important information on the market conditions for individual securities that are trading on a given day, and this information often can be extrapolated to assist in the accurate valuation of similar municipal issues that are not actively traded on a given day.

With respect to efficiency of pricing mechanisms, the transaction data available from TRS show that, while much of the market trades within a narrow range, there are instances in which intra-day prices for specific issues vary substantially, even when no apparent news or transaction size differences account for the different valuations. This fact is not intended to suggest that instances of substantial intra-day price volatility would be eliminated by real-time price transparency, particularly when the market is assimilating new information about interest rates or the credit quality of specific issues. However, the transaction data do suggest that the efficiency of pricing in some cases might be improved substantially if prices are made accessible on a real-time basis, as is done in many other securities markets. In general, real-time price transparency should benefit the market by helping to ensure that information relevant to the value of municipal securities issues is incorporated more quickly and reliably into transaction prices.

The Board also believes that real-time price transparency will enhance investor confidence by providing, for the first time, a comprehensive and contemporaneous view of the market, accessible to any interested party. There is a significant demand by sophisticated investors to see where municipal bonds are trading as part of their research and investment strategies for fixed-income products. Real-time price transparency will increase confidence that the best market price for specific securities has been located. For both institutional and retail investors, the open availability of market prices should instill greater confidence that pricing mechanisms in the market are fair, open and efficient.

(ii) *Proposed Amendments to Rules G–12(f) and G–14.* As discussed below, the procedures for dealers to report inter-dealer transactions to RTRS are integrated with the central comparison system to provide a cost-effective mechanism for dealers to report transactions in real-time.[5] The proposed rule change thus includes amendments both to Rule G–14 on transaction reporting and Rule G–12(f) on automated comparison. The Rule G–14 Procedures would also be amended.

Rule G–12(f). Rule G–12(f)(i) currently requires that an inter-dealer transaction eligible for automated trade comparison through the facilities of a clearing agency registered with the Commission (''registered clearing agency'') shall be compared through a registered clearing agency. Each party to the transaction must submit or cause to be submitted to the registered clearing agency all the information required by the registered clearing agency for automated comparison to occur. If a transaction fails to compare, the parties must use the procedures provided by the registered clearing agency to attain comparison, unless one of the parties provides the other with final notification of failure to compare. (Sections (ii) and (iii) of Rule G–12(f) pertain to other aspects of clearance and settlement unchanged by the proposed amendment.)

The proposed amendment to Rule G–12(f)(i) would contain a new requirement that inter-dealer trades effected during the RTRS Business Day, when eligible for automated comparison, be submitted to a registered clearing agency within 15 minutes of the time of trade. The RTRS Business Day (7:30 a.m. through 6:30 p.m.)[6] is defined in proposed Rule G–14. There would be limited exceptions to the 15-minute requirement, as detailed below. The proposed amendment would add a requirement, identical to that in the proposed amendment to Rule G–14, that inter-dealer trades effected outside the hours of the RTRS Business Day be submitted for comparison within 15 minutes of the start of the next RTRS Business Day. It also notes a dealer's obligation to monitor submissions made against it in the real-time comparison system and to use the procedures provided by the clearing agency to address any erroneous information concerning its side of a transaction that may be submitted by a contra-party.

Rule G–14 and Rule G–14 Procedures. The current Rule G–14 and the associated Rule G–14 Procedures require that dealers report their trades to the MSRB by midnight of trade date. The existing Rule G–14 Procedures exempt from reporting requirements transactions in municipal securities that are ineligible for assignment of a CUSIP number, transactions in municipal fund securities and the (rare) inter-dealer transactions that are not eligible for automated comparison. The current Rule G–14 Procedures also require each dealer to provide to the MSRB information about a person responsible for testing the dealer's capabilities to report customer transactions, and require the dealer to conduct such testing.

The proposed amendment to Rule G–14 would require the dealer to report information about its transactions to the MSRB or its designee in the manner required by RTRS Transaction Reporting Procedures, which in most cases require the report to be made within 15 minutes of the time of trade execution. The proposed amendment would retain without change the prohibition against reporting fictitious or fraudulent transactions, the statement of the

began disseminating a daily report of all trades done on a single day one month earlier, to enable users of the report to update their databases each day with trades reported or corrected more than one week after trade date. *See* Rel. No. 34–46380 (August 19, 2002), 67 FR 54831. In November 2002, the MSRB changed the trading threshold for the T+1 Daily Report from three trades to two trades. *See* Rel. No. 34–46819 (November 12, 2002), 67 FR 69779. In June 2003, the trading threshold was dropped and all T-submitted trades were disseminated on T+1. At the same time, the display of par values on this report were changed to show the exact par for trades of $1 million or less and ''1MM+'' for par over $1 million. *See* Rel. No. 34–47888 (May 19, 2003), 68 FR 28865.

[5] Automated comparison, which is required for inter-dealer transactions by rule G–12(f)(i), is accomplished by a clearing corporation registered with the Commission under section 17A of the Act. It is the first step in the clearance and settlement of an inter-dealer transaction and generally involves the matching of trade data submitted by both sides of an inter-dealer trade. Only one registered securities clearing corporation—National Securities Clearing Corporation—compares municipal securities transactions and is thus a central point for trade data in the municipal securities market. Consequently, the Board chose to use NSCC as the main portal for RTRS data submission and, with respect to inter-dealer transactions, to allow the comparison submission to also serve the purpose of transaction reporting.

[6] All times given are Eastern.

purpose of transaction reporting, and the requirement for the dealer to obtain an identifying symbol.

As in the current transaction reporting system, a dealer will be able to use an intermediary, *e.g.*, its clearing broker, to submit transaction reports. The MSRB expects those dealers that are not self-clearing to submit inter-dealer trades through their clearing broker as they do today. The language articulating dealer responsibility for timely and accurate reporting is clarified in the proposed amendment, reflecting existing policy of the MSRB. It notes that, while the dealer that effected the transaction has the primary responsibility to ensure timely and accurate transaction reporting, any dealer that submits information for transaction reporting on behalf of another dealer has a specific responsibility to ensure that transaction reporting requirements are met with respect to the activities under the dealer's control.

The proposed amendment would require each dealer to provide the MSRB with information needed to process transactions correctly on a new form, Form RTRS. The dealer would indicate thereon the method it will use to submit trade reports, its broker symbol, the identity of any intermediary or agent it will use to report transactions, contact information for dealer testing and operations staff and whether the dealer acts in the capacity of a broker's broker.[7] The proposed amendment also continues to maintain the current exemptions for transactions in municipal securities that are ineligible for assignment of a CUSIP number, transactions in municipal fund securities and the (rare) inter-dealer transactions that are not eligible for automated comparison.

Finally, as in the current Rule G–14 Procedures, a mandatory testing requirement is included in the proposed amendment. Testing would be required of dealers making the transition from the current Transaction Reporting System to RTRS, and also would be required of dealers that begin reporting transactions in the future. The MSRB will make testing facilities available to dealers at least six months before the announced effective date of the Proposed Rule Change (''Announced RTRS Start-Up Date''). Each dealer will have to be prepared to test its use of RTRS no later than three months before the Announced RTRS Start-Up Date and must schedule a test date by that time unless it has already successfully tested its RTRS capabilities. However, dealers that have effected an average of five or fewer transactions per week during the preceding year and that will use only the Web-based method must successfully test their RTRS capabilities one month before the Announced RTRS Start-Up Date.

The proposed RTRS Procedures would replace the current Rule G–14 Procedures used for TRS data submission with a new set of requirements specific to RTRS. The RTRS Procedures generally would require dealers to report trades to the MSRB within 15 minutes, using either a message-based or Web-based reporting method.[8] The 15-minute requirement would apply to all reportable trades effected during the RTRS Business Day, with the following limited exceptions:

- Syndicate managers, syndicate members and selling group members that effect trades in new issues at the list offering price would be required to report such trades by the end of the first day of trading in the issue.
- Dealers would be required to report trades in short-term issues such as variable rate instruments, auction rate products, and commercial paper by the end of the day in which the trades are effected.
- On a temporary basis, a dealer would be required to report trades within three hours of the time of trade if the CUSIP number and indicative data of the issue traded are not in the dealer's securities master file, the dealer has not traded the issue in the previous year, and the dealer is not a syndicate manager or syndicate member for the issue. This provision would sunset automatically one year after RTRS implementation.

The Board established the above exceptions after it received a number of comments on its exposure draft of the proposed rule change that indicated that dealers would face serious and in some cases insurmountable operational challenges in processing and reporting the above types of trades within 15 minutes using the processing systems available at this time. The challenges that are the basis for the reporting exceptions are discussed further in the section discussing comments received on the proposed rule change.

Under the proposed amendment to Rule G–14, trades effected outside the RTRS Business Day would have to be reported no later than 15 minutes after the beginning of the next Business Day. RTRS will be available to receive trade reports for at least 90 minutes after the end of an RTRS Business Day and at least 30 minutes before the beginning of the next RTRS Business Day, *i.e.*, from 7:00 a.m. through 8:00 p.m.[9] The RTRS Procedures would require that a dealer that does not submit transaction data in a timely or accurate manner must submit or correct the data as soon as possible. RTRS will provide to the submitter of data an indication of the status of each trade, *i.e.*, whether an error has been found in the input. The effecting dealer (and its clearing broker that submits data, if any) would be required to monitor the status of each trade report as shown in RTRS, and to review and address any problem or potential problem.

The RTRS Procedures provide specific requirements for reporting different types of transactions. As is the case currently in TRS, if an inter-dealer transaction is eligible for comparison at a registered clearing agency, the dealer or its clearing broker would satisfy the transaction reporting requirement by submitting the transaction to the registered clearing agency to achieve comparison. The inter-dealer trade submission would have to satisfy the requirements of the registered clearing agency and would have to include the additional information required by the MSRB in its *Specifications for Real-Time Reporting of Municipal Securities Transactions.*[10] To achieve comparison, both parties to the inter-dealer trade would have to submit or cause to be submitted a trade report to the registered clearing agency, unless the trade is one deemed by the clearing agency to be compared upon submission by the party on one side of the trade (unilateral submission).[11] The contra-

[7] Broker's brokers are dealers that hold themselves out to effect transactions exclusively between dealers, on an agency or riskless principal basis, and that do not take inventory positions in municipal securities. A broker's broker therefore always has matched purchase and sale transactions in the inter-dealer market. The requirement for a dealer to designate whether it is acting as a broker's broker will be used to mark transaction reports disseminated by RTRS. This is done to allow RTRS data users to distinguish these matched trades from other inter-dealer trading activity.

[8] In using the message-based method of trade reporting, the dealer would send electronic messages containing trade data from the dealer's computer to NSCC and receive interactive feedback, also as electronic messages. NSCC would act as a ''portal,'' relaying the messages to and from the MSRB's RTRS. Each trade would be reported with a message. In using the Web-based method, the dealer would enter trade data to RTRS through an Internet browser on the dealer's personal computer and would receive RTRS feedback that would appear on the screen. These two methods are further described in connection with the proposed Facility.

[9] As noted below, submissions may be made to RTRS via the Internet from 6:00 a.m. to 9:00 p.m.

[10] *See* ''Revised Specifications for the Real-Time Transaction Reporting System, Version 1.2,'' MSRB Notice 2004–2 (January 23, 2004), on *www.msrb.org.*

[11] For example, currently only the syndicate manager is required by NSCC to report its sales of

party would not be required to report a trade subject to unilateral submission but, to ensure the accuracy of trade information in RTRS, would be required to monitor such submissions against it to ensure that the data submitted against it is correct, and to use procedures of the registered clearing agency to correct the trade data if it is not.

Also similar to existing TRS requirements, transactions with customers would be reported by including the information required by the *Specifications for Real-time Reporting of Municipal Securities Transactions.* The extended reporting deadlines for new issue securities traded at the list price, securities not traded in the previous year and variable-rate securities would apply to customer transactions in the same way as they would to inter-dealer transactions.

The RTRS Procedures contain a new requirement that an agency trade effected for a customer by an introducing broker against the principal account of its clearing broker must be reported with data including the identity and role of the clearing broker. The information that will be required in this ''inter-dealer regulatory-only'' (''IDRO'') report is nearly the same as that in a unilateral submission of an inter-dealer trade. The IDRO reporting requirement represents a change from the existing transaction reporting system for municipal securities, in which the introducing broker reports an agency transaction with the customer, but no report is made of the offsetting side of the agency transaction if it is executed against the clearing broker's account. The change is being made at the request of NASD to provide a more complete audit trail for surveillance purposes, and is further described below in connection with the enhancements that will be available to regulators in the real-time environment. This change also provides greater consistency with the manner in which similar transactions are handled in the TRACE transaction reporting system for corporate bonds.

RTRS will also have new requirements for dealers to report indicators to show: ''special condition'' trades that might be effected at a price other than the market price. The dealer would provide a code identifying the reason for the special condition, such as that a trade was done ''flat.'' These indicators will enhance the market surveillance functions of the current reporting system and are described below in the section, ''Enhancement of information available to regulators.''

The *RTRS Users Manual* will give detailed guidance on how specific trading situations are handled and will include the *Specifications for Real-Time Reporting of Municipal Securities Transactions,*[12] the *Users Guide for RTRS Web,* and the *Testing Procedures.* The Users Manual will be located at *www.msrb.org* and may be updated from time to time.

(iii) *Proposed RTRS Facility.*

The MSRB has coordinated its plans for the RTRS facility with the new real-time comparison system for municipal and corporate bonds (the ''Real-Time Trade Matching'' or ''RTTM'' system) now being implemented by National Securities Clearing Corporation (NSCC).[13] The use of the NSCC telecommunication facility as a data collection point or ''Portal'' for transaction data and the use of a standard common format for trade reporting and automated comparison through NSCC are intended to reduce dealer costs in complying with the 15-minute transaction reporting requirement. Retail and institutional customer transactions and IDRO reports also will be reported through NSCC using the same record format as used for inter-dealer trades.[14] NSCC will not process customer transactions in the comparison system, but will forward the data to the MSRB and thus allow dealers to avoid setting up separate telecommunications links and facilities specifically for trade reporting to the MSRB.[15] In this manner NSCC and MSRB have attempted to provide a means for dealers to leverage their systems development work to satisfy two goals at once—that of real-time transaction reporting and real-time comparison of inter-dealer transactions. In this regard, the development plans for both systems have been coordinated to provide the greatest efficiencies possible for dealers.

Improved Functionality. The objective of real-time transaction reporting is to make price and volume information publicly available as soon as possible after trades are executed. Real-time reporting will also bring improved functionality to dealers and enforcement agencies, compared with the current batch-oriented reporting system. These improvements include:

- The ability to correct regulatory data, such as time of trade, on inter-dealer trade reports;
- The ability for a dealer to ensure the accuracy of regulatory information such as the time of trade, even when that information is reported on its behalf by a clearing broker;
- The capability for dealers to report their capacity as agent in inter-dealer trades; and
- Improvements in the ''audit trail'' of trade information.

Submission of Transaction Reports by Intermediaries. As in the current transaction reporting system, a dealer will be able to use an intermediary, *i.e.*, its clearing broker or service bureau, to submit transaction reports to RTRS. Also following current policies, inter-dealer transaction reporting and comparison will be accomplished using one transaction report. The MSRB expects those dealers that are not self-clearing to submit inter-dealer trades through their clearing broker as they do today. However, these dealers must ensure that the clearing broker will be able to submit the trade report satisfying both comparison and transaction reporting requirements within 15 minutes of the time of trade. Both dealers in this case will have the responsibility to work together to ensure that such trade submissions are timely and accurate. It will be possible for the correspondent to submit customer trade reports directly to the MSRB or for the clearing broker to submit on the correspondent's behalf.

Message-Based and Web-Based Input Methods. Two format options will be available for submission of data into RTRS: 1) message-based trade input, and 2) Web-based trade input. In message-based trade input, each trade is submitted as a ''message'' in a standardized format. A trade input message consists of a sequence of data tags and data fields—for example, the tag ''SETT'' followed by a date field indicates the settlement date of the trade. For real-time trade reporting and comparison, the format standard is the ISO 15022 format established by the International Organization for Standardization.[16] Each message is sent

new issue securities to syndicate members. NSCC deems such a trade compared on receipt of the syndicate manager's submission.

[12] *See* ''Revised Specifications for the Real-Time Transaction Reporting System, Version 1.2,'' MSRB Notice 2004–2 (January 23, 2004), on *www.msrb.org.*

[13] NSCC is a clearing agency registered under the Act.

[14] For RTTM message specifications, *see Interactive Messaging: NSCC Participant Specifications for Matching Input and Output Version 1.0* (March 31, 2003), and ''Modifications to RTTM Messaging Specifications,'' FICC CMU RTTM New Project Update Issue 6 (April 20, 2004), on *www.ficc.com.*

[15] By agreement with the MSRB, NSCC will not charge dealers for serving as the portal for customer transaction data, but MSRB will reimburse NSCC for any system costs that are attributable exclusively to this function.

[16] The ISO 15022 format is also used by NSCC's parent organization, the Fixed Income Clearing

Continued

as a separate unit between two computers. The fact that a trade message is the basic telecommunications unit enables real-time reporting, comparison and interactive feedback. Messages are well-suited to automated high-volume operations and to ''straight-through processing'' methods.

In using the Web-based method, the dealer manually accesses a Web site through an Internet browser to enter, correct or view trade data. As described below, different Web sites are used depending whether the data is entered for both comparison and regulatory reporting or only for reporting purposes. The Web-based method requires no system development work beyond setting up an Internet connection and obtaining the appropriate user ID, password and security safeguards. However, Web input is manual and it will not be possible to interface the Web-based method with the dealer's processing system. Therefore, exclusive use of the Web-based method for submitting transactions generally will be appropriate only for relatively low-volume submitters.

For high-volume submitters of transaction data, such as large dealers, clearing brokers and service bureaus, the only efficient and practical means for initial trade submission is likely to be message-based. The extent of systems work necessary for interfacing with RTRS (and with RTTM) in this case will be dependent in large part on whether the submitter currently captures trade data in real time for processing. Submitters that have prepared for real-time transaction reporting and comparison by converting from overnight batch processing systems to ones with a more real-time or straight-through processing approach should find the necessary systems changes comparatively minor.

Dealers may use the message-based method, the Web-based method, or both. Some high-volume dealers may submit the initial trade report as a message, review their submission and the RTRS status information on a Web site, and make corrections manually using Web-based trade input. Instead of using the Web, dealers may also submit corrections in message format. Alternatively, some low-volume dealers may use the message-based system if messaging is made available to them by clearing brokers or service bureaus.[17]

RTRS Portals. In the proposed amendment to the G–14 RTRS Transaction Reporting Procedures, the MSRB has designated three RTRS ''Portals'' for the receipt of municipal securities trade data. Each Portal has a different policy governing the type of trade data it can accept. Message-based trade input must go through the Message Portal, but Web-based trade input may go through either the RTRS Web Portal or the RTTM Web Portal.

- The Message Portal is operated by NSCC and accepts any type of municipal security trade submission or modification. All trade messages that the dealer indicates should be forwarded to RTRS will be relayed to RTRS by NSCC. In addition, messages that the dealer indicates should be processed by the comparison system will be routed to RTTM.[18]
- The RTRS Web Portal is operated by the MSRB and accepts any municipal security trade submission or modification except data that would initially report or modify inter-dealer transaction data used in the comparison process. (Comparison data instead must be entered into the comparison system using a method authorized by NSCC such as the Message Portal or the RTTM Web Portal). The RTRS Web Portal may be used to report or correct (a) customer trade data, (b) IDRO data, and (c) inter-dealer trade data, but only if that data is not used in comparison. For example, a dealer may use the RTRS Web Portal to correct an inter-dealer trade record with regard to the time of trade or dealer capacity, but not to correct (or to input initially) the CUSIP number, par or price of the trade.
- The RTTM Web Portal is operated by NSCC for comparison purposes.[19] It may be used to report or correct both ''comparison data'' (CUSIP number, par, price, etc.) and ''regulatory reporting data'' (time of trade, etc.), if that data is associated with an inter-dealer transaction eligible for comparison. The RTTM Web Portal may not be used to report or correct customer or IDRO trade records.

All RTRS Portals will be open to receive trade data for at least 90 minutes after the end of an RTRS Business Day and 30 minutes before the beginning of the next Business Day, *i.e.*, they will be open at least from 7 a.m. through 8 p.m. The RTRS Web Portal will be open for an additional 60 minutes at the beginning and end of the RTRS Business Day, *i.e.*, it will be open from 6 a.m. to 9 p.m.

Measurement of Timely Reporting. The time taken to report the trade will be measured by comparing the time of trade reported by the dealer with the time of receipt of the trade report at the designated RTRS Portal. RTRS will assess each trade against its reporting deadline (15 minutes, three hours, or end-of-day). Trades not received by the appropriate reporting deadline will be considered late.

Enhancement of Information Available to Regulators. MSRB has worked with NASD and other regulators to improve the audit trail and other surveillance capabilities that will be available once data is collected on a real-time basis. Some of these changes will require modifications or additions to existing transaction reporting procedures observed by dealers. One addition concerns the situation in which one dealer passes an order to a second dealer for execution directly out of the second dealer's principal account, with settlement made directly between the second dealer and the party placing the order. The situation requiring this ''Inter-Dealer Regulatory-Only'' or ''IDRO'' report typically occurs when a fully disclosed introducing broker submits a customer order to its clearing broker for execution, and the clearing broker executes and settles directly with the introducing broker's customer. The current TRS system requires only one trade report in this situation—a customer trade report from the introducing broker. RTRS procedures will require another trade report showing the identity and role of the clearing broker—it will be described as an Inter-Dealer Regulatory-Only transaction. The new trade report was requested by the NASD to provide a more complete audit trail for surveillance purposes.[20]

The current transaction reporting procedures require a dealer effecting a trade ''as agent'' for a customer to designate its capacity on the customer trade report. This requirement will remain in RTRS. Inter-dealer transaction reports currently do not require a capacity field to show whether the inter-dealer trade was done as agent for a

Corporation, for processing government, mortgage-backed, corporate, and unit interest trust securities.

[17] *See* ''Operational Overview of MSRB's Real-Time Transaction Reporting System,'' MSRB Notice 2003–13 (April 7, 2003), on *www.msrb.org.*

[18] Use of the Message Portal for trade comparison is currently restricted to NSCC participants.

[19] Use of the RTTM Web Portal is restricted to NSCC participants.

[20] To satisfy the need for this audit trail requirement the execution of the order by the clearing broker for the correspondent will be considered to constitute an inter-dealer ''transaction'' between the two dealers even though no principal position transfers between the two dealers. (The principal position in these situations moves directly from the clearing broker to the customer.) If a principal position does transfer between dealers, the trade is an ''Inter-dealer Transaction Eligible for Comparison,'' and the trade must be compared and reported, even though settlement between the parties may occur only as a movement on the books of the clearing broker. This is consistent with existing G–14 policy in TRS.

customer, but RTRS will add such a requirement.[21]

Another new feature added in the real-time environment is the Special Condition Code. RTRS will require a dealer that executes a trade with certain special conditions to code the trade report accordingly. For example, if there is a specific reason for a trade being reported at a price that is not a true market price, the dealer will indicate this with a Special Condition Code. A trade report with a Special Condition Code that is indicative of an off-market price will not be disseminated by RTRS, but will be made available to regulatory agencies for market surveillance and inspection purposes. Some Special Condition Codes will not be indicative of an off-market price but will report conditions such as a security that is traded ''flat.''[22]

RTRS will also add the reporting of a code by which a dealer will indicate that a price being reported was derived as part of a ''weighted average price'' transaction. A weighted average price transaction is one in which a dealer agrees to purchase up to a certain quantity of securities for a customer at market prices during the day, culminating with one sale transaction to the customer of the aggregate par value, with a price representing a weighted average of the dealer's purchases. The Price Dissemination Plan currently calls for displaying the ''weighted average price'' code along with other data about the transaction.

Another data element added for surveillance purposes is the identifier of an ''intermediate dealer'' in a transaction. This applies to a situation in which a dealer is a correspondent of an NSCC participant and this correspondent passes data to its clearing broker about a trade effected by a third dealer. Since the dealer that effected the trade is a correspondent of the clearing broker's correspondent, this dealer is termed the ''correspondent's correspondent.'' The proposed reporting procedures would require that if there are three dealers on one side of an inter-dealer trade, all three dealers must be identified in the trade report: The clearing broker, its correspondent, and the correspondent's correspondent. (If there are only one or two dealers on a side, as will usually be the case, the new ''correspondent's correspondent'' field will be omitted.)

Finally, although it does not require any change in dealer procedures, RTRS will provide regulators with the record of all changes reported by a dealer after its initial trade submission. This is an enhancement over the current system, which reports the results of trade modifications but does not show the initial submission or the subsequent change records. RTRS will provide reports to regulators showing each modification or cancellation of a trade report, including the time the change was made. The MSRB plans also to provide regulators with real-time connections to RTRS. This will enable regulatory agency staff to obtain routine reports of transactions more quickly than is now possible.

RTRS Processing. Following is a description of key steps in RTRS processing with regard to input requirements, input data flow, format edits, submitter validation, timestamping, lateness checking, content validation, feedback, modification and cancellation, and the maintenance of the surveillance database.

• *Input Requirements.* The basic transaction information proposed to be reported by a dealer in RTRS will be similar to that reported in the existing transaction reporting system. This information supports both the price transparency and surveillance functions of the system. The complete list of data elements required on a trade report are in Specifications for Real-time Reporting of Municipal Securities Transactions[23] and will be included within the RTRS Users Manual, available at *www.msrb.org.*

• *Input data flow.* RTRS receives information about each trade separately as an electronic message and processes each trade individually.[24] All inter-dealer trade messages that contain initial values or modifications to data elements needed for comparison (*e.g.*, dollar price or par) come to RTRS as messages via RTTM or as input to the RTTM Web. Inter-dealer trade messages that affect only data elements needed for regulatory reporting (*e.g.*, time of trade) come to RTRS either as messages via the RTTM network, or as Web-based input via the RTTM Web or RTRS Web. Customer and IDRO messages, since they contain data needed exclusively for regulatory reporting, come to RTRS as messages via the RTTM network or as input to the RTRS Web (but not via the RTTM Web).

• *Format edits.* Each message will be edited to verify that its format is correct.[25] This involves checking that required data elements are present in the correct form (*e.g.*, dates are in date format and money amounts are in decimal format) and with the correct number of digits or characters. Messages that fail these edits will not be processed further and an error message describing the deficiency will be returned to the submitter. Both RTTM and RTRS will conduct format edits. Input from Web-based screens will have been checked before it is transferred from the user's personal computer to the Web server.

• *Submitter validation.* RTRS will accept input only from parties known to the MSRB. Trade messages routed through RTTM are checked by RTTM and rejected unless submitted to RTTM by an NSCC participant. The message is checked again when received by RTRS and is not processed further unless it bears the identifier of a clearing broker or service bureau known to the MSRB. RTRS further checks each trade message to verify that the dealer has previously authorized the submitter to report trades on its behalf. RTRS Web-based input is validated at multiple levels. First, the user cannot log on to RTRS unless he or she enters a user identifier and password issued by the MSRB. RTRS security controls allow a dealer access only to trades in which it was a party or which it has submitted on behalf of another dealer. Finally, the dealer-submitter combination is validated in the same way as input from RTTM, above.

• *Timestamping.* To enforce the rule on timely reporting of trades in the real-time environment, each trade message will be given an electronic timestamp, accurate to the second, when it is received. RTRS will interpret the timestamp as the time the trade was reported. Messages that are input through the Message Portal or the RTTM Web Portal will be timestamped by RTTM, and messages submitted via the RTRS Web Portal will be timestamped by the RTRS server. By this means, any delays that may occur in application processing or telecommunications connections between RTTM and the MSRB will not affect the assessment of the time the trade was reported.

[21] The dealer is not required to link the inter-dealer and customer transaction reports associated with agency transactions.

[22] The MSRB in its June 2003 Notice requesting comment on plans for real-time reporting (discussed below), referred to some of what are now termed Special Condition Codes as ''Special Price Reason Codes.''

[23] *See* ''Revised Specifications for the Real-Time Transaction Reporting System, Version 1.2,'' MSRB Notice 2004–2 (January 23, 2004), on *www.msrb.org.*

[24] Screen input through either Web Portal is converted into message format by the appropriate Web server and sent from that server to the RTRS host computer.

[25] Message formats are defined in detail in the *Specifications for Real-time Reporting of Municipal Securities.*

• *Lateness checking.* The dealer will include an indicator in the trade message that shows the deadline that it understands applies to the trade report.[26] RTRS will determine whether the trade was received by the deadline. If the dealer indicates it has not traded the security in the previous year and therefore may report the trade up to three hours after the time of trade, RTRS will check whether the dealer's trading history is as claimed. If a trade is reported late, an error message indicating this fact will be sent to the submitter at the end of processing.

• *Content edits.* The values in the reported trade will be checked to determine that they are within reasonable limits, in order to detect input errors such as misplaced decimal points. The relationship between values is checked (*e.g.*, the settlement date may not precede the trade date) and crucial data elements are verified against reference tables (*e.g.*, the identifier of the dealer that effected the trade must be present in the RTRS dealer reference table). Finally, for those trades where the dollar price and yield are reported, the consistency of price and yield will be verified when possible.

• *Feedback.* If a dealer's message is deficient, RTRS interactive feedback will provide descriptive detail. MSRB anticipates that this feedback will help dealers to detect and correct errors quickly.

RTRS will generate an acknowledgement or error message for every reported trade, except inter-dealer trades that have passed RTTM edits and which do not have any RTRS errors. (These trades will already have been acknowledged by RTTM.) The acknowledgement/error message is sent to the dealer and/or submitter in the format(s) that the dealer or submitter has previously requested. The available feedback formats are message or e-mail. In addition, the dealer and the submitter may view the trade, and any errors found, using RTRS Web.

Feedback will indicate to the dealer whether the trade is error-free or late, and whether it is questionable or unsatisfactory for reporting purposes. A ''questionable'' trade message is one that appears to have an error, but which may be correct depending on circumstances. Examples are a trade with a yield that exceeds ten percent of the dollar price (bonds traded very close to a premium call may have a very high nominal yield, but this is most likely an input error) or a reported time of trade before 0600 hours (trading is allowed at any time of day, but this is most likely intended to be a time in the afternoon, *e.g.*, 5 p.m. reported as 0500). Under the proposed Rule G–14 RTRS Transaction Reporting Procedures, paragraph (e), dealers must examine such trade reports to determine if they are in fact erroneous and, if so, correct them. A trade is ''unsatisfactory for reporting purposes'' if it is missing an essential data element, is defective in some way that prevents it from being processed, or cannot be included in the surveillance database or publicly reported. Examples of ''unsatisfactory'' conditions are a reported trade date in the future, a missing dealer symbol, and an incorrect CUSIP check digit. Certain modification attempts are also unsatisfactory, such as a modification that cannot be matched with any previous message from the dealer.

• *Modification and cancellation.* Under the proposed rule change, the dealer is responsible for timely and accurate submission of trade reports. The dealer must monitor its reported trades by any of the available feedback methods and must correct any errors as soon as possible. If a dealer is unable to report a trade within the deadline, it must report the trade as soon as possible. RTRS will produce statistics on dealer performance in timely submission and timely correction of errors and will provide the statistics to dealers.

RTRS will enable dealers to submit, modify and cancel messages for all types of trades. Unlike the current transaction reporting system in which only customer trades can be modified to correct regulatory data, RTRS will support such changes for all trade types.

• *Surveillance database.* The RTRS Surveillance Database will store each message submitted by a dealer or service bureau. Audit trail reports will provide regulators with information about trades effected by a dealer, trades in specific CUSIPs, highest/lowest prices for a CUSIP within a day or other time period, and specific data elements such as trades with Special Condition Codes reported by a dealer. Other reports will show all modifications and cancellations reported by a dealer.

Testing and Contact Requirements. As described in connection with the proposed Rule G–14 Procedures, successful testing will be required of RTRS submitters to ensure a working interface with RTRS prior to the date for system operations. The proposed Procedures would require dealers to test their use of RTRS before reporting any trades. The MSRB will make testing facilities available to dealers at least six months before the announced effective date of the Proposed Rule Change (''Announced RTRS Start-Up Date''). Testing would be required of dealers making the transition from the current Transaction Reporting System to RTRS, and also required of dealers that begin reporting transactions in the future. Each dealer will have to be prepared to test its use of RTRS no later than three months before the Announced RTRS Start-Up Date and must schedule a test date by that time unless it has already successfully tested its RTRS capabilities. However, dealers that have effected an average of five or fewer transactions per week during the preceding year and that will use only the Web-based method must successfully test their RTRS capabilities one month before the Announced RTRS Start-Up Date.

The requirement for testing and submission of a new ''Form RTRS'' with the name of a contact person is reflected in the new proposed language for Rule G–14.

(iv) *Price Dissemination by RTRS. Description of Service.* Real-time price data will be available by subscription, after subscribers sign an agreement regarding re-dissemination. During the RTRS Business Day, price data will be disseminated in real time, immediately after receipt. Modifications and cancellations submitted by dealers that apply to earlier trade submissions will also be disseminated in real time.

The technical means of data dissemination are not yet determined. MSRB expects to make a second filing on the RTRS facility in the future with proposals for fees to be charged for the various RTRS data products.

In addition to real-time reports, the MSRB plans to continue providing reports each morning covering the previous day's trades (T+1 reports), as well as daily reports covering all trades done on the trading day one week earlier (T+5 reports), and monthly reports covering all trades done during the previous month.

Trades to be Disseminated. During the RTRS Business Day, the MSRB will disseminate data on all transactions as soon as they are received, except for two types of dealer submissions. The exceptions, which will be stored in the surveillance database but not disseminated in real-time, are trades marked as by the dealer as having prices other than market prices, using a

[26] As noted, trades must be reported within 15 minutes of the time of trade, except for new issue trades by syndicate managers or members at the list price (for which the deadline is the end of the first day of trading), trades in variable rate products or commercial paper (for which the deadline is the end of trade date), and trades in securities which the dealer has not traded in the previous year (for which the deadline is three hours from the time of trade).

Special Condition Code,[27] and reports of ''inter-dealer regulatory-only'' transactions. These have already been described.

List of Information Items to be Disseminated. The specific items proposed to be disseminated by RTRS for price transparency purposes are:

- CUSIP number and description of the issue traded;
- Par value of the transaction if one million dollars or under; otherwise reported as ''1MM+'';
- Dollar price;
- Yield (for inter-dealer new issue transactions done on a yield basis and for all customer transactions in non-defaulted securities where the transaction is done on a yield basis or if the yield can be computed from dollar price);
- Date and time of trade;
- Whether the transaction was a (i) purchase from a customer; (ii) sale to a customer; or (iii) inter-dealer transaction;
- Indicator that an inter-dealer transaction was done by a broker's broker and, if so, the broker's broker role as buyer or seller;
- When-issued indicator, if any;
- Syndicate list price indicator, if any;
- Assumed settlement date, if initial settlement date is not known at time of trade;
- Indicator that dollar price was computed by MSRB using an estimated settlement date for an issue on which the initial settlement date has not been set;
- Indicator that a trade was done at the weighted average price of trades done earlier in the day;
- Modification/Cancellation indicator, if any;
- RTRS broadcast time, date and sequential trade message number; and
- RTRS Control Number.

Transactions Done During RTRS Business Day. As noted, under the proposed rule language, dealers would with limited exceptions report within 15 minutes of the time of trade all transactions done during the RTRS Business Day. Trade submissions made during the RTRS Business Day will be disseminated within a few minutes of receipt.

Dissemination of Compared or Uncompared Inter-Dealer Trades. Unless the trade report contains errors or is subject to an exception, transactions reported by dealers during the RTRS Business Day would be disseminated within a few minutes after receipt at the designated RTRS Portal. The current plan for dissemination of prices calls for inter-dealer price information to be published only after comparison is achieved on the trade, as done in the current system. Comparison of the inter-dealer trade ensures the reliability of the data that was submitted, since the buyer's and the seller's details are matched. However, RTRS is being designed with the flexibility to disseminate uncompared inter-dealer transaction data if it is found that a substantial proportion of trades take longer than 15 minutes to be compared.[28]

Transactions Done Outside the RTRS Business Day. Under the proposed rule change, dealers would be required to report transactions done outside of the RTRS Business Day, but would not be required to do so on a real-time basis. Instead, trades would be reported within the first 15 minutes of the next RTRS Business Day, at which time they would be disseminated.

Late Trade Reports and Trade Data Modifications. Trades that are not reported within the timeframe set by the proposed rule change would be considered late. Late trade reports and trade modifications will be disseminated RTRS as soon as received if they are submitted during the RTRS Business Day and at the start of the next Business Day otherwise.

Broker's Broker Indicator. Trades by broker's brokers will be marked as such on disseminated trade reports and the buy/sell indicator will show whether the broker's broker was buying or selling. Because broker's broker trades occur in matched pairs that, in market terms, many observers view as representing one movement of securities between two dealers, the Board believes it will be helpful to RTRS data users if broker's brokers' trades are identified as such in trade reports.

(v) Implementation Schedule

RTRS development is proceeding on the following schedule.

2004

April—Beta testing with dealers began
July—Certification testing with dealers begins
July–Dec.—Dealers that have passed certification testing with RTTM and RTRS may report trades using new formats
October—Dealers that have not yet completed certification testing must schedule test, unless dealer reports an average of fewer than five trades per week (low-volume dealers)
November—Low-volume dealers that have not yet completed certification testing must schedule test
Dec. 15—All dealers must complete certification testing

2005

January—Real-time comparison and reporting requirements would become effective

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[29] which provides that the Board'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, 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 * * *''[30] The MSRB believes that the proposed rule change is consistent with the Act in that it will provide the market with more efficient pricing information and will enhance investor confidence in the market.

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

The Board does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all dealers in municipal securities.

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

(i) Introduction

Comments on the proposed rule change were solicited in a notice dated June 13, 2003 (the ''June 2003 Notice'').[31]

The MSRB received comments from:

[27] In an inter-dealer trade, if either dealer indicates the trade was done at a special price, RTRS considers the entire trade to be a special price trade.

[28] Unlike inter-dealer transactions, which have two submissions (both a buy side and a sell side) that must be compared, customer trades, which comprise approximately 80% of all reported trades, do not require comparison and will be disseminated as soon as automated error checks are completed.

[29] 15 U.S.C. 78o–4(b)(2)(C).

[30] *Id.*

[31] ''Request for Comment: Plan for Real-Time Price Reporting,'' MSRB Notice 2003–23 (June 13, 2003), on *www.msrb.org.*

Alliance Capital Management Corporation (''Alliance Capital'') [32]
The Asset Managers Forum (''AMF'') of the Bond Market Association [33]
William Blair & Company LLC (''Blair'') [34]
The Bond Market Association: Letter dated September 11, 2003 regarding operational issues (''BMA I'') [35]
BMA: Letter dated September 12, 2003 regarding price dissemination (''BMA II'') [36]
Cobey, Jacobson & Gordon, Inc. (''Cobey Jacobson'') [37]
Financial Information Forum (''FIF'') [38]
Fixed Income Securities, LLC (FIS) [39]
Griffin, Kubik, Stephens & Thompson, Inc. (5 e-mails) (''Griffin, Kubik'') [40]
Hartfield, Titus & Donnelly, LLC (''Hartfield'') [41]
Huntleigh Securities Corporation (''Huntleigh'') [42]
Regional Municipal Operations Association (''RMOA'') [43]
The Charles Schwab Corporation (''Schwab'') [44]
Seattle-Northwest Securities Corporation (''Seattle-Northwest'') [45]
Siebert Brandford Shank & Co., LLC (''Siebert'') [46]
Southlake Capital, LLC (''Southlake'') [47]
UBS Financial Services, Inc. (''UBS'') [48]
The Vanguard Group (''Vanguard'') [49]
Wachovia Bank, NA (''Wachovia'') [50]
Wedbush Morgan Securities (''Wedbush'') [51]

(ii) Comments on Real-Time Transparency

In the June Notice, the MSRB noted that it believes that real-time trade transparency will benefit the municipal securities market. The MSRB also noted that it had committed to reaching this goal. Commentators on the June Notice, however, are divided on whether transparency is generally beneficial to the market and on whether real-time transparency would harm the secondary market for certain infrequently traded issues. Two commentators believe that transparency generally benefits the municipal market and support the role of the MSRB in moving toward real-time price transparency. One commentator states that in general the MSRB proposal ''would improve the transparency of the municipal securities markets and provide substantial benefits to the investing public.'' One commentator believes that real-time reporting will ''enhance investor confidence in the municipal market'' and that ''while there will be short-term dislocations, eventually increased transparency will benefit all market participants.'' One commentator expresses the belief that the interests of mutual fund shareholders and individual bondholders ''are surely best served with the highest degree of price transparency'' and that ''any short-term dislocations would be inconsequential compared to the long-term benefits offered by the MSRB's proposal.''

Other commentators believe there is little increased benefit to greater transparency. They are concerned about negative liquidity effects, investor impacts and the possibility that dealers might exit the market if their spreads are narrowed. Three commentators believe that transparency will cause dealers to leave the market and therefore will adversely affect investors.

(iii) Comments on Operational Aspects

15-Minute Reporting Requirement. Four commentators express their concern about the operational resources necessary to achieve real-time reporting. One commentator ''wholeheartedly supports the approach MSRB has taken in using RTTM for submission of transaction data to RTRS'' and ''commend[s] the MSRB for coordinating the move to RTRS to coincide with NSCC's transition to RTTM.'' However, four commentators state concerns about the cost of redesign to the industry that will be necessary for compliance with the 15-minute reporting requirement and the possibility that the operating costs for small firms may make them less competitive with large firms.

The MSRB has designed RTRS to minimize the redesign and operational costs to report trades in real-time. The implementation date of real-time transaction reporting, originally scheduled for 1997, has been delayed by the MSRB several times to give dealers additional time to make changes in bond processing systems necessary to capture trade data and process it on a real-time basis.[52] The current focus on straight-through processing of securities transactions provides the best possible environment to make the conversion to real-time transaction reporting.[53] In particular, the contemporaneous development of RTTM by NSCC will allow dealers to leverage their systems development work to satisfy two goals at once—that of real-time transaction reporting and real-time comparison of inter-dealer transactions. For trades that are not eligible for comparison, NSCC will not process the transaction data submitted, but will immediately forward the data to the MSRB. This will allow dealers to avoid setting up separate telecommunications links and facilities specifically for trade reporting these trades to the MSRB.

Schedule for Phase-In of Real-Time Reporting. Five commentators state their belief that there should be a phased-in approach to dealer testing and implementation of RTRS. One of these commentators states that dealers require a minimum of six months of testing of RTRS after RTTM is fully operational, and proposes that after six months of RTTM operation, dealers would begin

[32] Letter from R. B. Davidson, III and Fred S. Cohen, Alliance Capital, to Justin Pica, MSRB, dated August 27, 2003.

[33] Letter from Kenneth Juster, The Asset Managers Forum, to Harold L. Johnson, MSRB, dated September 15, 2003.

[34] Letter from James D. McKinney, William Blair and Co., to Harold L. Johnson, MSRB, dated September 14, 2003.

[35] Letter from Lynette Kelly Hotchkiss, The Bond Market Association, to Harold L. Johnson, MSRB, dated September 11, 2003.

[36] Letter from Lynette Kelly Hotchkiss, The Bond Market Association, to Harold L. Johnson, MSRB, dated September 12, 2003.

[37] Letter from H. Todd Cobey, Cobey, Jacobson & Gordon, Inc., to Christopher Taylor, MSRB, dated August 7, 2003.

[38] Letter from W. Leo McBlain and Thomas J. Jordan, Financial Information Forum, to Harold L. Johnson, MSRB, dated September 12, 2003.

[39] Letter from Jim Dillahunty, Fixed Income Securities, LLC, to John Baughman, MSRB, dated October 31, 2003.

[40] E-mails from Brian J. Battle, Jeff S. Kellough, Shane S. Kranov and Tom W. Boylen, Griffin, Kubik, Stephens & Thompson, Inc., to Justin Pica, MSRB, dated October 3, 2003.

[41] Letter from John J. Lynch, Jr., to Harold L. Johnson, MSRB, dated October 1, 2003.

[42] Letter from John A. Bohrmann and Catherine T. Marshall, Huntleigh Securities Corp., to Larry Lawrence, MSRB, dated September 24, 2003.

[43] Letter from Thomas Sargant, Regional Municipal Operations Association, to Harold L. Johnson, MSRB, dated September 25, 2003.

[44] Letter from Diana Kohanski, The Charles Schwab Corporation, to Justin Pica, MSRB, dated September 8, 2003.

[45] Letter from John Rose and Maud Daudon, Seattle-Northwest Securities Corp., to Harold L. Johnson, MSRB, dated October 13, 2003.

[46] Letter from Harold Durk, Siebert Brandford Shank & Co., LLC, to Harold L. Johnson, MSRB, dated September 12, 2003.

[47] Letter from Richard L. Sandow, Southlake Capital, LLC, to Harold L. Johnson, MSRB, dated June 13, 2003.

[48] Letter from Charles Paviolitis, UBS Financial Services, Inc., to Justin Pica, MSRB, dated August 29, 2003.

[49] Letter from John J. Brennan, The Vanguard Group, to Harold L. Johnson, MSRB, dated September 9, 2003.

[50] Letter from Donna M. D'Orazio, Wachovia Bank, NA, to Harold L. Johnson, MSRB, dated September 15, 2003.

[51] Letter from David Colville, Wedbush Morgan Securities, to Harold L. Johnson, MSRB, dated October 9, 2003.

[52] *See, e.g.*, ''Real Time Reporting of Municipal Securities Transactions,'' *MSRB Reports,* Vol. 21, No. 2 (July 2001), and ''Plans for MSRB's Real-Time Transaction Reporting System,'' MSRB Notice 2003–3 (February 3, 2003), on *www.msrb.org.*

[53] *See, e.g.*, ''SIA Board Endorses Program to Modernize Clearing, Settlement Process for Securities,'' SIA Press Release (July 18, 2002) on *www.sia.com.*

submitting most inter-dealer trades through RTTM under the 15-minute reporting requirement. Two commentators would initiate reporting of customer trades using messages sent through RTTM at the same time as inter-dealer trades, but would delay subjecting customer trades to the 15-minute requirement until dealers have six months of experience with real-time inter-dealer trade reporting.

One commentator suggests that during the testing and phase-in period the MSRB provide ''progress reports'' that would help dealers measure their success and become aware of areas that need improvement. This commentator believes that regulators, in assessing individual firms' performance, should not use the progress reports. One commentator states that dealers ''will need the co-operation of the enforcement agencies in recognizing the difference between non-compliance and growing pains.''

The MSRB notes that in December 2003 it announced a revised schedule that extended the RTRS operational start date from mid-2004 to January 2005 and thereby provided six more calendar months for dealer system preparation. The MSRB believes this went far to allay the concerns expressed above relating to dealer readiness for real-time transaction reporting. Under the revised schedule, RTRS was available for beta testing with dealers in April 2004. In July 2004, RTRS will go into parallel operation with RTTM. Dealers will continue to be able to test with RTRS from this point onward, and, in addition, may at any time before January 2005 opt voluntarily to submit trades in the message format and to discontinue using the current batch format. Dealers voluntarily using the message format before 2005 will be encouraged to submit trade reports in real time, but the current end-of-day requirement will remain in effect until 2005.

Based on the above schedule, the MSRB is not aware of an operational reason to phase in the customer trade reporting requirement six months after the inter-dealer reporting requirement as requested by some commentators. Both customer and inter-dealer trades accordingly are proposed to become subject to the 15-minute requirement in January 2005.

With regard to the request for compliance progress reports, the MSRB plans during the testing period to make reports available to each dealer showing the dealer's performance on the various compliance parameters, along with industry averages for each parameter. To the extent that these reports will relate to dealer performance during the test period on 15-minute reporting (rather than the existing requirement to report by midnight of trade date), the MSRB notes that the performance data is not intended to relevant for enforcing existing ''end-of-day'' reporting requirements.

Exemption from the 15-Minute Requirement for Syndicate and Other New Issue Trades. Several commentators discuss the reporting of trades by an underwriting syndicate and other trades in new municipal securities issues. One commentator states that there are so many transactions associated with a new issue that it may be physically impossible to enter them all within 15 minutes. Two commentators note that CUSIP numbers and ''indicative data'' (securities descriptive data needed to make price/yield calculations and to confirm a transaction, such as dated date, coupon and maturity) are often not available to market participants, especially dealers that are not in an underwriting syndicate, on the first day of trading of new issues. Regarding syndicates, one commentator states that ''the Syndicate Manager always has the complete details before the Selling Members, putting the Selling Members at a disadvantage.''

In addition, five commentators question the value of reporting syndicate trades because, as one commentator states, ''on sale date, the new issue transactions are done at a price that is already publicly known by way of the public offering itself,'' and therefore there is little need for real-time disclosure of these new issue prices. One commentator notes that the price reported on the first official day of trading in an issue may reflect an agreement based on market conditions on a day that precedes the initial trade date for the issue. This commentator further states that trade reports on the initial trade date for a new issue may consist of both primary market trades (possibly based on prices agreed to days before) and secondary market trades reflecting that day's market environment, which, it says, might mislead some investors as to prevailing market prices on the initial trade date.

Five commentators propose that reports of new issues should be required by the end of the first trading day or, if the CUSIP number is still not available, the next day. One commentator states that ''this should be considered a temporary reprieve and the industry should begin to search for a more permanent solution.'' One commentator proposes a flag for trades in the primary or secondary market to indicate that a submission has exceeded the 15-minute window because the CUSIP had to be added to the firm's or to its vendor's security master file.

The MSRB agrees, in light of the large number of pre-sale commitments that a syndicate manager or syndicate member may have to report when a bond purchase agreement is signed or an award is announced, that it may be burdensome and even impossible in some cases for a syndicate manager or member to report all of these transactions within 15 minutes using systems that are currently available to dealers. Accordingly, the planned changes to Rules G–12(f) and G–14 will allow syndicate managers, syndicate members and selling group members to report their trades done at the list offering price as late as at the end of the day on which the issue was traded. They would be required to include in the trade report an indicator to show that the trade is a ''syndicate price trade,'' *i.e.*, a trade done by a syndicate manager or member at the list offering price on the first day of trading. Once a new issue has been released for trading, normal transaction reporting rules will apply to the syndicate manager and members and they will be required to enter trades within 15 minutes of the time of trade, as they also will be required to do for trades done at other than the publicly stated list price.

With respect to the concern that syndicate prices are mixed in with ''secondary market'' prices on the initial trade date, the MSRB plans to disseminate the ''syndicate list price'' indicator with the trade as part of the transparency reports. The MSRB also will monitor this area to see if additional action is warranted. With respect to the concern that it is sometimes difficult for dealers to obtain issue information such as CUSIP numbers in order to submit trades within 15 minutes,[54] the MSRB is reviewing possible modifications to Rule G–34 on CUSIP numbers and new issue requirements to enhance the availability of this information and to ensure that trades are submitted in a timely manner after execution occurs in the new issue market.

The comments on adding new CUSIP numbers and indicative data for new issues are addressed in the next paragraph, since a similar topic arises in connection with some secondary market transactions.

Exemption for Trades in Issues Not Traded in the Prior Year. Six

[54] For a discussion of this concern, *see* ''Real-Time Transaction Reporting: Revised Schedule and Operational Plan,'' MSRB Notice 2003–44 (December 11, 2003) on *www.msrb.org.*

commentators discuss secondary market trades of securities that have not been traded for a long time.[55] They state that it is not practical for a dealer to keep all 1.5 million CUSIP numbers in its securities master file in preparation for a possible trade, and that it is not possible to obtain and enter a CUSIP number and indicative data for such a security within 15 minutes of the trade. These commentators cite times ranging up to several hours as being necessary, depending on circumstances.[56] The same considerations would apply to a dealer that is not a member of a syndicate and that is trading a new issue for the first time.

The MSRB understands that, using existing systems, a dealer that does not currently have a CUSIP number in its security master file might reasonably take as much as three hours to enter the issue into its securities master, even when best efforts are applied. Therefore, the proposed rule change will provide, when a dealer has not traded an issue within the past year, that a three-hour trade reporting requirement will apply rather than a 15-minute reporting requirement. The dealer will be required to code the trade report with an indicator to show that the report was delayed because of the need to add the CUSIP number to the dealer's master file. Because the MSRB believes it is practical for a dealer's securities master file to hold all the CUSIP numbers it has traded in the previous year, a dealer will not be allowed to use this exemption for a particular CUSIP more than once during the year it is in operation. Trades that the dealer indicates are delayed because of the need to add the CUSIP number will be checked against the dealer's previous transaction reports to ensure that the issue had not been traded by that dealer during the past year. The three-hour requirement also would apply to new issue securities that a dealer trades for the first time, as long as the dealer in question is not the syndicate manager or a syndicate member. This should address concerns dealers have about obtaining new issue information on issues that they are not underwriting. The MSRB believes that syndicate managers and syndicate members do have, or should have, timely access to information on a new issue that they are underwriting.

The three-hour provision will expire or ''sunset'' automatically after one year from the date of RTRS implementation. During this year, MSRB plans to work with dealers, trade associations and information vendors to ensure that industry efforts are being made to speed up the process of updating securities master files and that indicative data provided by the various commercial services meets dealer needs with respect to 15-minute transaction reporting with respect to quality and consistency as well as speed.

Exemption for Variable and Short-Term Instruments. Two commentators note that short-term instruments such as variable rate demand obligations (VRDOs), commercial paper and auction rate instruments typically are traded at par or at the clearing bid rate, and three commentators state that there is limited benefit to disseminating such prices in real time. Two commentators cite the difficulty of real-time reporting of transactions in these instruments, since they are sold at auction with unpredictable results and are large issues involving numerous investors. They believe that trades in short-term instruments should be reported at the end of the day rather than within 15 minutes. However, one commentator states that VRDO reporting should be reported in real time because ''it is preferable to have a consistent procedure for submitting these trades.''

The MSRB understands that trades in variable rate products (including auction rate products) and commercial paper frequently are processed in a different manner than other fixed rate municipal securities. Because it may present significant operational challenges for dealers to incorporate these instruments in the 15-minute reporting stream, the proposed rule change would require that trades in short-term instruments, including variable rate and auction rate products and commercial paper, be reported by the end of the day rather than within 15 minutes. The dealer will include an indicator in the trade report to show that the security is being reported outside the 15-minute window for this reason. The proposed rule change would require that trades in longer-term notes (*i.e.*, securities with a fixed or zero interest rate and over nine months in maturity) be subject to normal reporting rules.

The MSRB does not currently plan to require reports of yields or reset rates on variable rate and auction rate products, but continues to be interested in price transparency in this area. Accordingly, the MSRB will explore other ways to provide transparency for the short-term rates that are being set in reofferings and in variable rate and auction products.

Discrepancies in Timestamps on Inter-Dealer Trades. The BMA states that its members ''question the basis upon which the valid timestamp [on a trade report] will be determined in the case of an inter-dealer discrepancy,'' and it asks the MSRB to clarify this point. RTRS processing will assume that if there are different times on sides of an inter-dealer trade, the earlier time is correct. If the times differ by more than 15 minutes, RTRS will send messages to parties on both sides informing them of the difference, but RTRS will not mark either time as invalid. The MSRB plans to review this assumption as experience is gained with real-time reporting.

ATS Indicator. The June 2003 notice requested comments about designating certain trades that are done through alternative trading systems (ATSs). The BMA states that the expectation that ATS trades will be reported is ''both problematic and unnecessary'' and asks for additional information from the MSRB about the utility of reporting and disseminating the ATS designation. This commentator states that trading information through ATSs is already reported to the SEC and that the SEC might make such information available to the MSRB.[57] Hartfield states that, while it is registered as an ATS, it does not execute trades with broker-dealers through electronic means, but instead functions as a voice-broker. In light of this, the commentator believes ''the identification of our trades as ATS trades will be confusing, and provide inaccurate data.''

The commentators have raised issues that would be problematic for real-time reporting in the case of an ATS dealer in municipal securities that also does non-ATS trades. The MSRB plans to review the issue to determine whether there is another way to enhance existing audit trail capabilities with respect to electronically executed trades without identifying traditional voice brokered trades as ''ATS'' transactions. At this time, the MSRB is dropping the requirement for dealers to identify ATS trades, but is retaining the field in the reporting format for potential use later.

[55] One commentator states the problem is exacerbated for West Coast firms that use East Coast clearing firms and that trade late in the afternoon Pacific Time.

[56] One commentator states that up to two hours are necessary and another states that setup can take more than three hours. One commentator states that ''this process is normally measured in hours, not minutes.'' One commentator depends upon a service bureau where setting up a CUSIP ''can take quite a bit of time.'' One commentator, without citing details, states a concern about the time to set up non-investment grade paper. One commentator states that even dealers that have integrated data services with their processing systems still take approximately 7–11 minutes to set up a security traded in the secondary market, if it was not already set up.

[57] The MSRB understands that the SEC does not have trade-level data on ATS trades similar to the RTRS trade-level data. ATSs send quarterly summaries of activity to the SEC but they do not report to the SEC each transaction price and size.

When RTRS is initially implemented, dealers will not be required to populate the ATS indicator in trade reports.

RTRS Business Day. The June 2003 Notice requested comment on the proposed requirement to report trades within 15 minutes if the trades are done during the ''RTRS Business Day,'' defined as the period between 7:30 a.m. and 6:30 p.m. Eastern time. The time of receipt of an electronic trade report would be the time of its arrival at NSCC. Trades reported during the Business Day would be disseminated in real-time. Transactions effected outside of the RTRS Business Day would have to be reported by dealers no later than 15 minutes after the start of the next RTRS Business Day. Schwab states that it ''prefer[s] to follow the same procedures used in GSCC reporting'' but does not specify the GSCC procedures or their advantages. Hartfield agrees with the MSRB's proposal that the RTRS business day would be defined to extend from 7:30 a.m. to 6:30 p.m. The proposed rule change retains the definition of the RTRS Business Day contained in the June 2003 Notice.

(iv) Comments on Trades To Be Disseminated

Divided Views on Infrequently Traded Issues. Some commentators that generally support transparency nevertheless express concern about its effect on liquidity in certain market segments. The BMA describes its concern as being focused on issues that are ''concentrated in the hands of a few dealers or buy-side institutions'' which are traded ''when a bond has been outstanding for a considerable period of time or has a low or uncertain credit standing''.[58] The BMA also suggests that an economic study should be conducted to examine the issue. The BMA states,

> * * * Immediate price dissemination for bonds that are infrequently traded and difficult to trade will likely mean that dealers will either be less willing to supply liquidity to the market by buying bonds in these circumstances, or else will only buy them at a discounted price that accounts for this additional risk.* * * [59]

The opposite view is expressed by Vanguard, which proposes that all trades should be disseminated. Vanguard believes that the goals of real-time price transparency should apply to ''actively traded securities and, especially, inactively traded ones.'' It states, ''we strongly oppose * * * the exclusion of inactively traded securities from the reporting regime.''

Proposals to Phase-In Real-Time Price Dissemination. Several commentators suggested that a phased implementation, in which some issues are held back from real-time dissemination in the initial phase, might ease liquidity concerns. Seattle Northwest, without proposing details, states that dissemination should be phased-in ''in order to further study the impact on liquidity of infrequently traded bonds.'' The BMA [60] proposes that the MSRB immediately disseminate trades in all bonds rated ''A'' or higher and all trades of $1 million or less, regardless of rating. Under this proposal, trades in bonds rated below ''A'' that are over $1 million in size would not be disseminated in real-time.[61] Alliance Capital, which also stated that it would like ''more disclosure of trading in blocks greater than $1 million,'' proposes deferring dissemination of trades in bonds rated below ''AA−'' and phasing in the remainder of trades.

In considering the comments on phasing in real-time transparency, the MSRB weighed the potential for liquidity problems against the potential for transparency benefits. The MSRB believes that any liquidity problems that may occur are likely to be temporary and will resolve over time as market participants make adjustments in response to the more transparent environment. The MSRB also believes that the potential for transparency benefits, such as more accurate pricing, lower transaction costs for investors and increased investor confidence, outweighs the potential for short-term liquidity problems. On this basis, the MSRB has determined that, with the exception of issues that are not required to be reported by dealers within 15 minutes of the trade, all transactions should be disseminated in real-time as they are executed.

(v) Comments on Information To Be Disseminated

Display of Par Value. The current TRS system produces reports that display actual par value on all transactions of $1 million or less that were effected the previous day and an indicator for larger trades stating only that the trade size was over $1 million. The ''par value screen'' for trades over $1 million was adopted by the MSRB in 2002 because of concerns that the exact par value of large trades tends to identify the market participants involved in those trades in thinly traded issues.[62] In connection with its phase-in proposal, the BMA suggests that real-time trade reports disclose par value of transactions in investment-grade securities, showing actual trade size for trades up to $5 million in par value, with actual par value shown for the remaining trades on a report made one week later, as is done today. Alliance Capital also states that more information on par value should be shown on trade reports. Wachovia ''strongly agree[s]'' with the MSRB's current policy of displaying ''1MM+'' for all trades of $1 million or more to prevent easy identification of the trading parties.

Because the primary purpose of real-time transparency is to provide price information, and because the concern over identifying parties to transactions in real-time with exact par values of large trades, the MSRB at this time is proposing to retain the policy of displaying the exact par value for trades of $1 million or less and displaying ''1MM+'' for larger trades. The same values will be displayed on reports published each morning covering the previous day's trades (T+1 reports). As currently, exact par values of all trades will be disseminated five business days after trade date. The MSRB will review this policy as it gains experience with real-time transparency.

Broker's Broker's Transactions. The June 2003 Notice asked whether RTRS trade reporting could in some way address concerns that have been expressed about the reporting of broker's broker's trades in the same way as other inter-dealer trades. It can be argued that this format ''double counts'' this movement of securities between dealers since many observers consider the broker's broker's two trades effectively to be only one ''trade'' in the market. Hartfield, a broker's broker, comments that MSRB should not disseminate broker's broker's trades at all because ''these trades do not accurately reflect the information intended by price transparency, *i.e.*, PRICE information. * * *'' UBS [at 3] believes ''identifiers used to indicate * * * broker's broker trades * * * will help avoid double counting. * * *'' RMOA states that these trades should be reported because ''including them would not exaggerate volume but would clearly reflect the path the bond has taken.''

[58] *See* note 36 *supra,* at 4.

[59] *Id.*

[60] The Asset Managers Forum, which describes itself as an independent affiliate of the BMA, agrees with the BMA proposals.

[61] Trades in all bonds will be disseminated one week after trade date, as they are now. No commentators oppose this feature.

[62] TRS publishes a comprehensive transparency report one week after trade date, which includes dealer error corrections and late trade reports. This report shows the actual par value for trades over $1 million.

The MSRB has determined to disseminate broker's brokers' trades along with an indicator that they were effected by a broker's broker, and to indicate whether the broker's broker bought or sold the security. As noted above, broker's broker trades occur in matched pairs that, in market terms, many observers view as representing one movement of securities between two dealers. Accordingly, the Board believes it will be helpful to RTRS data users if broker's broker's trades are identified as such in trade reports.

Agency and Riskless Principal Transactions. As with broker's brokers' trades, users of TRS data sometimes have been confused over reports of agency transactions by dealers. In TRS, and as planned in RTRS, the dealer reports both sides of an agency transaction and these trade reports are each disseminated, even though many observers consider it to be one trade. In response to the June 2003 Notice, one commentator, UBS, suggested that agency and riskless principal indicators be disseminated in trade records to avoid the double counting issue inherent in these situations.

Although new capabilities in RTRS would allow the system to identify agency trades on disseminated reports of inter-dealer trades, RTRS will have no capability to identify riskless principal trades. Indicating agency trades without similarly marking riskless principal transactions would introduce inconsistent treatment of two types of transactions that most observers consider to be equivalent in economic terms. Therefore, RTRS will not disseminate agency or riskless principal indicators in its transparency reports.

Inter-Dealer Regulatory-Only Reports. Another double counting issue concerns the new type of trade report in RTRS termed the Inter-Dealer Regulatory-Only or ''IDRO'' report (described above). The MSRB has determined not to disseminate IDRO reports as trades. The IDRO is reported to the MSRB for audit trail purposes and is substantially different than a true, principal-to-principal, trade between dealers. Each IDRO is related to a separately reported and disclosed transaction with a customer. Given the existence of the reported customer trade showing the net price paid by the customer, the IDRO imparts no additional market pricing information.

Trades Reported at Prices Other than the Market Price. The June 2003 Notice asked whether codes showing that a trade was done at a price different than the true market price should be disseminated or whether off-market trades should be disseminated at all. It also asked dealers to describe specific reasons that might cause a transaction to be effected at an off-market price. RMOA gives as an example of a special price a premium price paid to cover a Depository Trust Corporation short position.

Under current practices, trades done at a price different than the market price are not separately indicated by dealers reporting trades to TRS. When such trade reports are received, they are disseminated and contribute to intra-day price discrepancies seen in the current T+1 reports. Therefore, the MSRB has determined not to disseminate trades that the dealer indicates as trades done at other than the market price. (Certain Special Condition Codes will be indicative of prices other than the market price.[63]) All special price trades nevertheless will be kept in the RTRS database for surveillance purposes for use by the NASD, SEC and bank regulatory agencies. RTRS will, however, disseminate ''weighted average'' trades that are received, with an indicator to that effect.

Transaction Control Numbers. RTRS will assign a ''control number'' to each transaction reported by a dealer. This is a unique number that will apply to the initial submission and subsequent corrections or cancellations of trade data.[64] The June 2003 Notice asked for views on the use of the RTRS control number to track trade report corrections and modifications. The intent was to obtain comment both on the operational question of dealers using the control number to refer to a submission when making a change, and on the question of disseminating the control number so that a user of public trade information can tell when a trade has been changed after it is first disclosed. In response, Schwab, RMOA and UBS state that they agree with the MSRB's proposed use of the control number on trade information disseminated by RTRS.

The MSRB plans to disseminate trade corrections and modifications in real time, including the RTRS control number on original trades and on any subsequent changes in the trade. This will enable users of real-time information to more easily update their databases when dealers make changes to trades that have been reported and disseminated.

Comment on National Matrix. Blair states that instead of increasing transparency, a national matrix should be established that would provide investors with yield information via the MSRB's Web site and the Wall Street Journal. The MSRB notes that private vendors publish matrix-type information in the form of various daily scales, and believes it would add little benefit for the MSRB to publish a matrix.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and 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–MSRB–2004–02 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–MSRB–2004–02. 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

[63] As previously noted, the June 2003 Notice used the term ''Special Price Reason Code'' to refer to some of what are currently called Special Condition Codes.

[64] In making trade corrections, a dealer may refer to a transaction using either the RTRS control number or its own control number.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the Board's principal offices. 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–2004–02 and should be submitted on or before July 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[65]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–14676 Filed 6–28–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49903; File No. SR–NASD–2004–086]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to NASD Rule 4200 to Clarify the Treatment of Certain Non-Preferential, Ordinary-Course Payments

June 22, 2004.

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 June 1, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On June 17, 2004, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change has been filed by Nasdaq as a ''non-controversial'' rule change under Rule 19b–4 under the Act,[4] which renders the proposal effective upon filing with the Commission.[5] 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

Nasdaq proposes to change Rule 4200(a)(15) to clarify the treatment of certain non-preferential payments made by financial institutions to directors of listed companies and their family members in the ordinary course of business. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.[6]

* * * * *

Rule 4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(14) No change

(15) ''Independent director'' means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship, which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) No change

(B) a director who accepted or who has a Family Member who accepted any payments from the company or any parent or subsidiary of the company in excess of $60,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i)–(iii) No change

(iv) benefits under a tax-qualified retirement plan, or non-discretionary compensation; [or]

(v) *loans from a financial institution provided that the loans (1) were made in the ordinary course of business, (2) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with the general public, (3) did not involve more than a normal degree of risk or other unfavorable factors, and (4) were not otherwise subject to the specific disclosure requirements of SEC Regulation S–K, Item 404;*

(vi) payments from a financial institution in connection with the deposit of funds or the financial institution acting in an agency capacity, provided such payments were (1) made in the ordinary course of business; (2) made on substantially the same terms as those prevailing at the time for comparable transactions with the general public; and (3) not otherwise subject to the disclosure requirements of SEC Regulation S–K, Item 404; or

(vii) loans permitted under Section 13(k) of the Act.

Provided however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 4350(d).

(C)–(G) No change

(16)–(38) No change

(b) No change

IM—4200 Definition of Independence—Rule 4200(a)(15)

It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 4200. Rule 4200 also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 4350.

The Rule's reference to a ''parent or subsidiary'' is intended to cover entities the issuer controls and consolidates with the issuer's financial statements as filed with the Commission (but not if the issuer reflects such entity solely as an investment in its financial statements). The reference to executive

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[65] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 16, 2004 (''Amendment No. 1''). Amendment No. 1 clarified the text of IM–4200 regarding the three-year ''look back'' periods applicable to certain provisions of the definition of ''independent director'' in NASD Rule 4200. The change conforms with a recent amendment to the text made by Nasdaq in another proposal. *See infra* note.

[4] 17 CFR 240.19b–4.

[5] 17 CFR 240.19b–4(f)(6).

[6] Changes are marked based on the text of Rule 4200 as amended by File No. SR–NASD–2004–80 and Amendment No. 1 thereto.