

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54416; File No. SR-MSRB-2006-07)

September 8, 2006

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to MSRB Rule G-14 RTRS Procedures Relating to “List Offering Price” and “Takedown” Transactions

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 August 15, 2006, 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 substantially prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The MSRB is filing with the Commission a proposed rule change to Rule G-14 RTRS Procedures under Rule G-14, Reports of Sales or Purchases, to expand the usage of “list offering price” transactions to include certain inter-dealer “takedown” transactions and to require the reporting of these transactions as “list offering price” transactions on the first day of trading of a new issue. The text of the proposed rule change is available on the MSRB’s Web site (<http://www.msrb.org>), at the MSRB’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

MSRB Rule G-14 requires brokers, dealers, and municipal securities dealers (collectively “dealers”) to report information about each purchase and sale transaction effected in municipal securities to the Real-Time Transaction Reporting System (“RTRS”) in the manner prescribed by Rule G-14 RTRS Procedures. Rule G-14 requires that transactions effected with a time of trade during the hours of the RTRS business day be reported within fifteen minutes of the time of trade to an RTRS Portal.

Under MSRB Rule G-14 RTRS Procedures, paragraph (a)(ii), there are three exceptions to this fifteen minute reporting requirement. The exception addressed by the proposed rule change currently allows 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 to report such trades by the end of the day on which the trades were executed.³ This exception is known as the “List Offering Price” exception.

³ The other two exceptions to the fifteen minute reporting rule are: (1) a dealer effecting a trade in a short-term instrument under nine months in effective maturity (including variable rate instruments, auction rate products, and

The “List Offering Price” is defined as the publicly announced initial offering price at which a new issue of municipal securities is to be offered to the public.⁴ The MSRB provided the end-of-day reporting deadline for these customer transactions because of the substantial operational difficulties underwriters would face in reporting large numbers of List Offering Price transactions within a fifteen-minute window after the formal award. The MSRB also concluded that real-time dissemination of large numbers of primary market transactions occurring at the same price would not offer a substantial benefit to RTRS transparency objectives.

For purposes of RTRS transaction reporting, a “Takedown” transaction is a primary market sale transaction executed on the first day of trading of a new issue by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the List Offering Price. In a 2004 notice, the MSRB stated that these inter-dealer transactions must be reported within fifteen minutes of the time of execution and that they do not fall within the List Offering Price end-of-day exception.⁵ As experience with real-time transaction reporting has increased, however, industry members have pointed out that Takedown transactions share many of the same characteristics as List Offering Price transactions. A high volume of Takedown transactions on the first day of

commercial paper) shall report such trades by the end of the business day on which the trades were executed; and (2) a dealer shall report a trade within three hours of the time of trade if certain conditions apply. See MSRB Rule G-14 RTRS Procedures (a)(ii)(B) and (C).

⁴ If the price is not publicly disseminated (e.g., if the security is a “not reoffered” maturity within a serial issue), the price is not a List Offering Price. See “Reminder Notice on List Offering Price and Three-hour Exception for Real-Time Transaction Reporting: Rule G-14,” MSRB Notice 2004-40 (December 10, 2004).

⁵ See id.

trading in a new issue, for example, often presents operational difficulties for underwriters attempting to report all of their Takedown transactions within a fifteen-minute window. It also has been noted that prices for both Takedown transactions and List Offering Price transactions are set under an offering price agreement for the new issue and therefore do not necessarily reflect market prices at the time the transaction is effected. Thus, the proposed rule change would expand the definition of List Offering Price to include Takedown transactions, require use of an indicator on reports of all List Offering Price and Takedown transactions, and retain the end of the day exception from the normal fifteen minute reporting deadline for the expanded category of “List Offering Price/Takedown” transactions.⁶

The proposed List Offering Price/Takedown indicator would be required to be used by dealers when reporting any primary market sale transaction executed on the first day of trading of a new issue:

- by a sole underwriter, syndicate manager, syndicate member or selling group member at the published list offering price for the security (“List Offering Price Transaction”); or

⁶ These List Offering Price/Takedown transactions would be designated with the same special condition indicator currently in use for List Offering Price transactions. The technical requirements for the current List Offering Price indicator are summarized in the Specifications for Real-Time Reporting of Municipal Securities Transactions which is available on-line at <http://www.msrb.org>. The draft revisions to the Specifications for the indicator identifying the List Offering Price/Takedown Transactions may be found in “Request for Comment on Draft Procedures for Reporting Special Condition Indicators on Certain New Issue Transactions,” MSRB Notice 2006-10 (April 21, 2006).

- by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published list offering price for the security (“RTRS Takedown Transaction”).

The indicator would be included on MSRB price transparency reports to designate to transparency report users that the trade report does not represent a normal secondary market transaction. The proposed rule change recognizes the similarities between List Offering Price and Takedown transactions and the dissimilarities between these transactions and secondary market transactions in a new issue. Since the secondary market transactions in a new issue are likely to provide the best gauge of the current market value for a new issue and may be reported to RTRS simultaneously with List Offering Price and Takedown transactions, the MSRB believes that transparency reports on the first day of trading for a new issue would be more useful if List Offering Price and Takedown transactions were identified with a special condition indicator.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,⁷ which provides that the MSRB’s rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism

⁷ 15 U.S.C. 78o-4(b)(2)(C).

of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will allow the municipal securities industry to produce more accurate trade reporting and transparency and will enhance surveillance data used by enforcement agencies.

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

The MSRB 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.

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

On April 21, 2006, the MSRB published for comment a notice with respect to reporting procedures for List Offering Price and Takedown transactions.⁸ In response, the MSRB received six comment letters from: The Bond Market Association (“TBMA”), Jerry L. Chapman, Private Investor (“Chapman”), Digital Assurance Certification LLC (“DAC”), First Southwest Company (“First Southwest”), Nuveen Investments (“Nuveen”) and Wulff, Hansen & Co. (“Wulff, Hansen”).⁹

TBMA, Chapman, DAC and Nuveen all indicated support for including Takedown trades in the definition of list price transactions and allowing such transactions to be reported by the end of the day. Chapman stated that he is “happy to see the MSRB

⁸ MSRB Notice 2006-10 (April 21, 2006).

⁹ The comment letter from Wulff, Hansen did not address the issues relating to List Offering Price and Takedown transactions in MSRB Notice 2006-10 (April 21, 2006). Rather, the comment letter discussed other aspects of the Notice that are not relevant to this rule filing.

is . . . recognizing [that] a takedown trade is a list trade.” First Southwest supported the proposal to include Takedown transactions “within the definition of List Offering Price” and giving such transactions the end-of-day exception from real-time reporting.¹⁰

After reviewing these comments, the MSRB approved the draft amendments for filing with the SEC.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The MSRB proposes an effective date for the proposed rule change of January 8, 2007. 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:

¹⁰ First Southwest, however, opposed the proposal in MSRB Notice 2006-10 (April 21, 2006) that dealers would be required to use a special condition indicator for these transactions. The indicator, however, must be mandatory in order to be useful in distinguishing List Offering Price and Takedown transactions from secondary market transactions.

- 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-2006-07 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2006-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's 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-2006-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(12).