

Proposed Rule Change by Municipal Securities Rulemaking Board  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Rules G-8, on Books and Records, G-9, on Preservation of Records, and G-34, on CUSIP Numbers and New Issue Requirements, to Improve Transaction Reporting of New Issues

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Justin"/>	Last Name	<input type="text" value="Pica"/>
Title	<input type="text" value="Uniform Practice Policy Advisor"/>		
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**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
Municipal Securities Rulemaking Board  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="11/27/2007"/>
By	<input type="text" value="Ronald W. Smith"/>
	(Name)
	<input type="text" value="Corporate Secretary"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) The Municipal Securities Rulemaking Board (“MSRB”) hereby files with the Securities and Exchange Commission (“Commission”) a proposed rule change consisting of an amendment of its Rule G-8, Books and Records, Rule G-9, Preservation of Records, and Rule G-34, CUSIP Numbers and New Issue Requirements, (collectively referred to hereafter as “proposed rule change”). The proposed rule change is designed to improve transaction reporting of new issues and would accelerate the timing for CUSIP number assignment and, with the exception of new issues of short-term instruments with less than nine months in effective maturity, require underwriters to: (i) submit certain information about a new issue of municipal securities to Depository Trust and Clearing Corporation’s New Issue Information Dissemination System within set timeframes; and (ii) set and disseminate a “Time of First Execution” that allows time for market participants to access necessary information in preparation for trade reporting prior to beginning trade executions in the issue. The MSRB proposes an effective date for this proposed rule change of June 30, 2008. The text of the proposed rule change is set forth below. New language is underlined; deletions are in brackets.

**Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers**

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) through (xxii) No Change.

(xxiii) Records Concerning Compliance with Rule G-34. A broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Rule G-34(a)(ii)(C)(1) shall maintain:

(A) a record of the Time of Formal Award;

(B) a record of the Time of First Execution; and

(C) a record of the time the new issue received “Trade Eligibility” status in the new issue information dissemination system.

(b) – (e) No change.

(f) **Compliance with Rules 17a-3.** Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted

transactions involving customers; paragraph (a)(viii); and paragraphs (a)(xi) through (a)(xxiii) [(xxii)] shall in any event be maintained.

(g) No change.

#### **Rule G-9: Preservation of Records**

(a) No change.

(b) Records to be Preserved for Three Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than three years:

(i) through (xiv) No change.

(xv) the records to be maintained pursuant to rule G-8(a)(xxi); [and]

(xvi) the records to be maintained pursuant to rule G-8(a)(xxii); and [.]

(xvii) the records to be maintained pursuant to Rule G-8(a)(xxiii).

(c) – (g) No change.

#### **Rule G-34: CUSIP Numbers and New Issue Requirements**

(a) New Issue Securities.

(i) Assignment of CUSIP Numbers.

(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue (“underwriter”) and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue (“financial advisor”) shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue, as follows:

[(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue (“underwriter”) shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue. The underwriter shall make such application as promptly as possible, but in no event later than, in the case of negotiated sales, a time sufficient to ensure assignment of a CUSIP

number or numbers prior to the time the contract to purchase the securities from the issuer is executed; or, in the case of competitive sales, the time of the first execution of a transaction in the new issue by the underwriter. A broker, dealer or municipal securities dealer acting as a financial advisor to an issuer in connection with a competitive sale of an issue shall ensure that application for a CUSIP number or numbers is made in sufficient time to permit assignment of CUSIP numbers prior to the time of award. In making an application for CUSIP number assignment, the following information shall be provided:]

(1) The underwriter in a negotiated sale shall make an application by no later than the time that pricing information for the issue is finalized. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP number assignment occurs prior to the formal award of the issue.

(2) The underwriter in a competitive sale for which no CUSIP numbers have been pre-assigned shall make an application immediately after receiving notification of the award from the issuer. The underwriter in a competitive sale shall ensure that CUSIP numbers are assigned prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

(3) A financial advisor shall make an application by no later than one business day after dissemination of a notice of sale. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(4) In making applications for CUSIP number assignment, the following information shall be provided:

(a) [(1)] through (h) [(8)] No change.

(5) Any changes to information identified in this paragraph (a)(i)(A) and included in an application for CUSIP number assignment shall be provided to the Board or its designee as soon as they are known but no later than a time sufficient to ensure final CUSIP number assignment occurs prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

(B) through (D) No Change.

(ii) Application for Depository Eligibility, CUSIP Number Affixture and Initial Communications. Each underwriter shall carry out the following functions:

(A) through (B) No change.

(C) The underwriter of a new issue of municipal securities shall communicate information about the new issue in accordance with the requirements of this paragraph (a)(ii)(C) to ensure that other brokers, dealers and municipal securities dealers have timely access to information necessary to report, compare, confirm, and settle transactions in the new issue and to ensure that registered securities clearing agencies receive information necessary to provide comparison, clearance and depository services for the new issue; provided, however, that this paragraph (a)(ii)(C) shall not apply to short-term instruments under nine months in effective maturity, including variable rate instruments, auction rate products, and commercial paper.

[(C) The underwriter shall as promptly as possible announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.]

(1) The underwriter shall ensure that the following information is submitted to a new issue information dissemination system in the manner described in the written procedures for system users and that changes to submitted information are made as soon as possible:

[(1) the CUSIP number or numbers assigned to the issue and descriptive information sufficient to identify the CUSIP number corresponding to each part of the issue assigned a specific CUSIP number; and]

(a) the Time of Formal Award. For purposes of this paragraph (a)(ii)(C), the “Time of Formal Award” means, for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award.

(b) the Time of First Execution. For purposes of this paragraph (a)(ii)(C), the “Time of First Execution” means the time the underwriter plans to execute its first transactions in the new issue. The underwriter shall designate a Time of First Execution that is no less than two hours after all information required by paragraph (a)(ii)(C) has been transmitted to the new issue information dissemination system.

(c) All other information identified as required for “Trade Eligibility” in the new issue information dissemination system.

(2) The underwriter shall ensure that all information identified in this paragraph (a)(ii)(C) is provided no later than two hours of the Time of Formal Award. For purposes of this paragraph (a)(ii)(C), the hours counted in determining the responsibilities of an underwriter shall include only the hours of 9:00 A.M. and 5:00 P.M. Eastern Time on an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii).

[(2) the time of formal award. For purposes of this subparagraph (a)(ii)(C), time of formal award shall mean, for competitive issues, the time the issuer announces the award, and, for negotiated issues, the time the contract to purchase the securities from the issuer is executed.]

(3) The term “new issue information dissemination system” means an automated, electronic system operated by a securities clearing agency registered with the Securities and Exchange Commission providing depository services for municipal securities that receives comprehensive new issue information on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating such information to information vendors supplying formatted municipal securities information for use in automated trade processing systems.

(D) The underwriter of a new issue of municipal securities of short-term instruments under nine months in effective maturity, including variable rate instruments, auction rate products, and commercial paper, shall as promptly as possible announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.

(1) the CUSIP number or numbers assigned to the issue and descriptive information sufficient to identify the CUSIP number corresponding to each part of the issue assigned a specific CUSIP number; and

(2) the Time of Formal Award as defined in subparagraph (a)(ii)(C)(1)(a).

(E) [(D)] No change.

(iii) No change.

(b) – (c) No change.

\* \* \*

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

The proposed rule change was adopted by the MSRB at its October 17-18, 2007 meeting. Questions concerning this filing may be directed to Justin R. Pica, Uniform Practice Policy Advisor, at 703-797-6716.

## **3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

### **(a) Purpose**

MSRB Rule G-14, on transaction reporting, requires all brokers, dealers and municipal securities dealers (“dealers”) to report all transactions in municipal securities to the MSRB Real-Time Transaction Reporting System (“RTRS”) within fifteen minutes of the time of trade execution, with limited exceptions. One exception listed in Rule G-14 RTRS Procedures, paragraph (a)(ii) is a “three-hour exception” that allows a dealer three hours to report a transaction in a when, as and if issued (“when-issued”) security if all of the following conditions apply: (i) 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; (ii) the dealer has not traded the issue in the previous year; and (iii) the dealer is not a syndicate manager or syndicate member for the issue.<sup>1</sup>

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<sup>1</sup> Another exception is an end-of-day deadline for reporting trades in short-term instruments under nine months in effective maturity, including variable rate instruments, auction rate products, and commercial paper.

The three-hour exception was designed to give a dealer time to add a security to its “securities master file” so that a trade can be reported through the dealer’s automated trade processing systems. A securities master file contains the information about a municipal security issue that is necessary for a dealer to be able to process transactions in the issue. It includes such items as the interest rate, dated date, interest payment cycle, and put and call schedules. The dealer’s securities master file often contains information only for securities held in custody for customers and for securities that have been recently traded. If a dealer trades a security that is not in its securities master file, the relevant securities information must be obtained by the dealer from an information vendor before the trade can be processed and reported.<sup>2</sup>

For new issue transactions, a dealer’s access to necessary securities information depends not only on its link with an information vendor but also on whether that vendor itself has the information on the new issue. Vendors currently obtain much of their new issue information through voluntary cooperation from underwriters. This process does not always result in all the vendors having the necessary securities information by the time trade executions begin. Dealers trading a new issue for the first time need the three-hour exception from the fifteen-minute trade reporting requirement for their first trades in a new issue because the securities information is not always available at the time the trade is executed.<sup>3</sup>

To address inefficiencies in the collection of new information securities data, Securities Industry and Financial Markets Association (“SIFMA”), industry members, securities information vendors, and other service providers in the municipal securities market have worked extensively with The Depository Trust and Clearing Corporation (“DTCC”) to develop a centralized system for collecting and communicating new issue securities information. The system, called the “New Issue Information Dissemination System” (“NIIDS”), will be operated by DTCC and will act as a central collection point for standardized electronic files of new issue information provided by underwriters which will be disseminated in real-time to information vendors.

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<sup>2</sup> Many dealers use service bureaus for various trade processing functions, including the maintenance of securities master files. Securities master file update procedures for service bureaus are the same as those described for dealers.

<sup>3</sup> In the new issue market, information vendors seek to collect information on each issue and deliver it to customers in time for trade reporting in the new issue. There are several challenges for vendors and dealers to meet the reporting deadlines. For example, there are approximately 15,000 new municipal issues that must be set up in databases each month. Another problem for the industry is the fact that approximately 85 different information fields for each issue must be successfully gathered, which in large part depends on the timely cooperation of the underwriters.

Although the amount of securities information needed for trade reporting under Rule G-14 is limited,<sup>4</sup> many of the automated trade processing systems used to report trades currently need more extensive securities information (essentially the information necessary to produce a trade confirmation) before a trade can be reported. The industry initiative on NIIDS has resulted in a relatively comprehensive list of new issue securities data that will be collected and disseminated by NIIDS, including Time of Formal Award and Time of First Execution, discussed below. DTCC plans to implement NIIDS in early 2008.<sup>5</sup>

The proposed rule change is designed to improve new issue transaction reporting through requiring underwriter participation with NIIDS. The proposed rule change prescribes timetables for submission of data to NIIDS and other underwriter procedures that are intended to ensure that all dealers have timely access to the new issue information that is needed for compliance with trade reporting requirements. The MSRB proposes a June 30, 2008 effective date for the proposed rule change.<sup>6</sup>

#### **AMENDMENTS TO RULE G-34**

Currently, Rule G-34 requires underwriters<sup>7</sup> to apply for CUSIP numbers within specific deadlines and to transmit a limited amount of information about a new issue such as the coupons, maturities and issue closing date to DTCC. The rule also contains a requirement for Time of Formal Award to be disseminated to market participants that may trade the new issue. The proposed rule change would accelerate the timing for CUSIP number assignment and, with the exception of new issues of short-term

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<sup>4</sup> RTRS only requires dealers to include limited information on trade reports in when-issued securities, such as the CUSIP number of the security traded, the par value of the transaction, and the transaction price expressed as either yield or dollar price.

<sup>5</sup> In addition to providing an improved mechanism for disseminating the new issue information necessary for trade processing, the system also would use the information for purposes of establishing depository eligibility for new issues. DTCC plans to require use of the New Underwriting System (“NUWS”), of which NIIDS is a component, beginning in April 2008.

<sup>6</sup> NIIDS, in conjunction with MSRB rules, should make it possible for dealers to report new issue trades earlier and thus eliminate the need for the three-hour exception for when-issued trade reports. Accordingly, the MSRB has filed with the SEC a proposed rule change to sunset the “three-hour exception” on June 30, 2008, to coincide with the effective date of the proposed rule change. *See* SR-MSRB-2007-07.

<sup>7</sup> Rule G-34 defines “underwriter” very broadly to include a dealer acting as a placement agent as well as any dealer purchasing new issue securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the “underwriter” for purposes of Rule G-34.

instruments with less than nine months in effective maturity, require underwriters to: (i) submit certain information about a new issue of municipal securities to DTCC's NIIDS System within set timeframes; and (ii) set and disseminate a "Time of First Execution" that allows time for market participants to access necessary information in preparation for trade reporting prior to beginning trade executions in the issue.

#### Timing of CUSIP Number Assignment

CUSIP numbers are a required data element for automated trade processing and trade reporting systems and will be a prerequisite for entry of new issue information into NIIDS. Timely processing of new issue transactions requires that CUSIP numbers be assigned as early as possible in the underwriting process. Rule G-34 contains various requirements for underwriters, and for dealers acting as financial advisors on competitive sales, to apply to the CUSIP Service Bureau for CUSIP number assignment. The current deadlines are based on: the time the bond purchase agreement is executed (for underwriters in negotiated sales); the time of the issuer's award (for dealers acting as financial advisors in competitive sales); and the time of the first execution of a trade in the issue (for underwriters in competitive sales). The proposed rule change would set new deadlines designed to ensure CUSIP number assignment occurs as soon as possible in the underwriting process, allowing for the timely submission of new issue information to NIIDS.

For negotiated issues, the proposed rule change would require that an application must be made no later than the time that the pricing information for the issue is determined. For a dealer acting as a financial advisor on a competitive deal, the proposed rule change would require an application for CUSIP number assignment to be made within one business day of dissemination of a notice of sale. The proposed rule change also states a general requirement that the underwriter on a negotiated underwriting and a dealer acting as a financial advisor on a competitive deal would be required to ensure that final CUSIP number assignment occurs prior to the formal award of the new issue.<sup>8</sup>

Rule G-34 currently requires the underwriter in a competitive sale to apply for CUSIP numbers if an application has not already been made by the issuer or the issuer's representative. The MSRB understands that CUSIP numbers for competitively sold issues generally are assigned by the date of sale, but that on occasion this is not done.<sup>9</sup>

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<sup>8</sup> Under existing provisions of Rule G-34, dealers frequently apply for CUSIP numbers before interest rates are determined. In these cases, the dealer must provide the final interest rate information as soon as it becomes available. The proposed rule change would clarify that a dealer must update any of the required information that changes after an initial application as soon as the new information becomes available.

<sup>9</sup> As noted above, in competitive sales where a dealer serves as financial advisor, Rule G-34 requires the dealer to apply for CUSIP numbers. However, in competitive sales where there is no dealer financial advisor, there is no other

Dealers have noted that, in these situations, automated trade processing and real-time trade reporting for the issue may be delayed because of the time necessary for the underwriter to obtain CUSIP numbers after the formal award. The proposed rule change would clarify the underwriter's existing responsibility in such situations to apply for CUSIP numbers immediately after receiving the award.

#### Underwriter Requirement to Provide Information to NIIDS within Certain Deadlines

The proposed rule change would require underwriters to transmit new issue information to NIIDS within deadlines that are intended to ensure that the information reaches information vendors and is further re-disseminated for use in automated trade processing systems by the time that trade executions begin in a new issue. The specific items of information required to be submitted are those generally considered necessary for automated trade processing in an issue and are designated in the NIIDS system as items necessary for "Trade Eligibility."

Underwriters would be required to submit this information electronically in accordance with the methods and formats stated for NIIDS system users. The information could be provided through computer-to-computer links or through a web interface allowing manual input of data. Although the underwriter would be ultimately responsible for timely, comprehensive and accurate data submission, the proposed rule change would allow for use of an intermediary to accomplish this function.<sup>10</sup>

NIIDS is designed so that, once CUSIP numbers are assigned to a new issue, information about the issue can be submitted as it becomes available. The proposed rule change would require underwriters to provide information specified by NIIDS as required for Trade Eligibility as soon as it is available, with a final deadline for all such information to be provided no later than two hours after the Time of Formal Award, which would be redefined as discussed below. The proposed rule change also states that only the hours between 9:00 A.M. and 5:00 P.M. Eastern on an RTRS Business Day are counted for purposes of the time tables listed in the draft amendments. For example, if the Time of Formal Award occurs at 6:00 P.M. Eastern, the time tables listed in the proposed rule change would not commence until 9:00 A.M. Eastern on the next RTRS Business Day.

#### Revised Definition of "Time of Formal Award"

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dealer associated with the issue prior to the date of sale that can be charged under MSRB rules with the responsibility to make a pre-sale application for CUSIP numbers.

<sup>10</sup> Several industry vendors that provide "bookrunning" services to underwriters on new issues have indicated that they plan to offer a service to transmit information about a new issue to NIIDS on behalf of the underwriter.

The Time of Formal Award represents the earliest time that a dealer can execute transactions in a new issue and is used currently in Rule G-34 and in the proposed rule change to set certain deadlines. The proposed rule change includes a minor change to the current definition of “Time of Formal Award” for purposes of Rule G-34 timetables. The MSRB understands that underwriters are not always present at the time the issuer executes a bond purchase agreement or formally confirms an award of a competitive issue. Some time may elapse between this time and the time at which the underwriter becomes aware of the issuer’s action and this delay may not be under the control of the underwriter. To address this issue, the proposed rule change states that for purposes of Rule G-34, “Time of Formal Award” is defined as:

- for competitive issues, the later of the time the issuer formally awards the issue or the time the issuer notifies the underwriter of the award; and,
- for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution of the agreement.

The Time of Formal Award is one of the required information items to be submitted to NIIDS. Therefore, it would be subject to the general requirement to be submitted as soon as it is available as well as the ultimate deadline for submission of all required data, which is two hours after the Time of Formal Award. These requirements should ensure that all information necessary for trade reporting is available through NIIDS no later than two hours after the Time of Formal Award.

#### “Time of First Execution” and Advance Notification Requirement

The second major component of the amendments to Rule G-34 is an advance notification requirement that would ensure that all dealers have advance notification of the underwriter’s planned time for first trade executions and can be prepared to process trade executions by that time. The MSRB understands that under current industry practices, underwriters do not always disseminate the time that they intend to begin trade executions. Consequently, dealers that are not in the underwriting group sometimes do not know when their own transactions in the issue should begin and this may negatively affect the ability of those dealers to report their initial transactions in a timely and accurate manner or to coordinate their reported time of trade execution on inter-dealer transactions with members of the underwriting group.

To address this concern, the proposed rule change would require the underwriter of a new issue to disseminate the “Time of First Execution,” which is the underwriter’s anticipated time for beginning trade executions in a new issue. Once an underwriter has completed the submission of all required information to NIIDS, the information then will need to be re-disseminated to other dealers that may have trades in the issue and these dealers (and service bureaus) will need to “set up” automated trade processing systems with the new issue information. To allow time for this process to occur, the underwriter

would be required to provide a Time of First Execution that is at least two hours after the time that all required information is provided to NIIDS.

The proposed rule change would accommodate several situations that may occur in the underwriting of new issues of municipal securities. For example, the underwriter would be allowed to submit an anticipated Time of Formal Award rather than wait for the actual Time of Formal Award if the underwriter and issuer have agreed in advance on a Time of Formal Award. This may be the case if the formal award is a scheduled pro forma requirement by an issuer's governing body and all details necessary for the formal award have been finalized and submitted to NIIDS in advance. The underwriter could in this case complete its submission to NIIDS using the anticipated Time of Formal Award. By doing this, the underwriter could schedule its Time of First Execution to occur immediately after the formal award, rather than waiting two hours. Any changes to these times would require correction in NIIDS as soon as known. As long as the two-hour notification period has been met once, however, it would not be necessary to start a new notification period as a result of minor adjustments to the Time of Formal Award or Time of First Execution.

#### **AMENDMENTS TO RULES G-8 AND G-9**

The proposed rule change includes amendments to the MSRB's recordkeeping rules that would require an underwriter to retain for three years a record of the Time of Formal Award, a copy of the notification from DTCC indicating that a new issue received Trade Eligibility status in NIIDS and the Time of First Execution. This would provide a record showing whether the underwriter provided information necessary for Trade Eligibility no later than two hours after the Time of Formal Award and whether the underwriter provided at least two hours advance notification of the Time of First Execution.

##### **(b) Statutory Basis**

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (the "Act"), which provides that the MSRB's rules shall:

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

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.

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

The MSRB does not believe the proposed rule change will impose any burden on competition since it would apply equally to all brokers, dealers and municipal securities dealers.

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

On March 5, 2007, the MSRB published for comment an exposure draft of the proposed rule change<sup>11</sup> (the "March 2007 draft amendments").<sup>12</sup> While the MSRB did not request comment on the amendments to Rule G-8 and G-9, these amendments were included in the proposed rule change to provide enforcement agencies with information necessary to gauge compliance with the amendments to Rule G-34.

The MSRB received comments on the March 2007 draft amendments from the following commentators:<sup>13</sup>

- Bear Stearns and Co., Inc
- Standard and Poor's CUSIP Service Bureau ("CUSIP")
- First Southwest Company ("First Southwest")
- J.J.B. Hilliard, W.L. Lyons, Inc. ("Hilliard Lyons")
- Joe Jolly and Co., Inc.
- Lehman Brothers ("Lehman")
- Roosevelt and Cross, Inc. ("Roosevelt and Cross")
- Securities Industry and Financial Markets Association ("SIFMA")
- Wiley Bros.

While many of the commentators made specific suggestions on details of the March 2007 draft amendments, commentators were generally supportive. SIFMA "supports ... efforts by the MSRB to improve the efficiency of new issue information to the market necessary for dealers to comply with price reporting requirements." Hilliard Lyons stated "the centralization of an electronic system for new issue trade processing is a change that the industry has been eager for implementation ... [and the MSRB's] proposal would alleviate the duplication of information that is sent to numerous vendors

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<sup>11</sup> See MSRB Notice 2007-10 (March 5, 2007).

<sup>12</sup> The March 2007 draft amendments also included amendments to Rule G-14 that would create a new Conditional Trading Commitment (CTC) special condition indicator. The CTC indicator is not included in the proposed rule change as it is still under consideration by the MSRB.

<sup>13</sup> A copy of the notice requesting comment on the March 2007 draft amendments and the comment letters received are included as Exhibit 2.

and would cut down on the time needed to process new issues.” Roosevelt and Cross agreed “with the philosophy of a central issue facility, which would make more information available on a timely basis and would increase transparency in the municipal marketplace.”

#### Timing of CUSIP Number Assignment

CUSIP numbers are a required data element for automated trade processing and reporting systems and are a prerequisite for entry of new issue information into NIIDS. Rule G-34 currently requires that CUSIP numbers be assigned prior to the Time of Formal Award for underwriters of negotiated issues and for dealer financial advisors on competitive issues. The March 2007 draft amendments included new deadlines designed to ensure that CUSIP number assignment occurs as soon as possible in the underwriting so that information submission to NIIDS could occur as early as possible. The March 2007 draft amendments stated the following requirements:

- Managing underwriter of negotiated issue – apply for CUSIP number assignment within one business day of dissemination of a Preliminary Official Statement (POS); for issues sold without a POS, apply no later than the time pricing information is finalized.
- Dealer financial advisor on competitive issue – apply for CUSIP number assignment within one business day of dissemination of a POS; for issues sold without a POS, apply within one business day of a notice of sale.
- Managing underwriter of competitive issue with no pre-assigned CUSIP numbers – apply immediately after receiving notification of award and ensure that CUSIP numbers are assigned prior to transmitting Time of First Execution to NIIDS.

While CUSIP stated that it “has always encouraged industry participants to apply for CUSIP numbers as early as possible” and supports the proposed changes to Rule G-34 that would advance the timing of CUSIP number assignment, several commentators opposed a requirement to apply for CUSIP numbers earlier in an underwriting. SIFMA and First Southwest recommended that the existing requirements for CUSIP number assignment remain unchanged because information about a new issue is not always final at the time of the dissemination of a POS. SIFMA stated that “the maturity schedule in a POS is tentative and very likely to change requiring underwriters to revise the application” and noted that “while CUSIP numbers can be revised, the revisions result in numbers being out of sequence, and out of sequence numbers raise questions by investors and traders, as well as complicating operations.” SIFMA noted that underwriters that want to set an early Time of First Execution would be required to apply for CUSIP numbers earlier than is currently required under Rule G-34; however, while this may occur in some instances, the MSRB believes that many underwriters will continue to postpone making an application for CUSIP number assignment until shortly before the Time of Formal Award.

If a POS is not disseminated on a new issue, the March 2007 draft amendments included an alternative deadline for making a CUSIP number application. For a negotiated issue, the March 2007 draft amendments proposed requiring an underwriter to

apply for CUSIP numbers at the time that pricing information is determined. For a dealer financial advisor on a competitive issue, the March 2007 draft amendments proposed requiring the dealer financial advisor to apply for CUSIP numbers within one business day of a notice of sale. The MSRB decided to use these alternative deadlines in the proposed rule change as they occur later in an underwriting than the time that a POS would typically be disseminated, but in advance of the Time of Formal Award, and should have the desired effect of advancing the timing of CUSIP number assignment.

#### Definition of “Time of Formal Award”

The March 2007 draft amendments revised the definition of “Time of Formal Award” to take into consideration that time may elapse between the time of the issuer’s action and the time the underwriter becomes aware of the issuer’s action. Although commentators were supportive of the revised definition of Time of Formal Award, SIFMA clarified that for a competitive transaction they “interpret time of formal award not to occur before there is a set quantity and price,” a definition with which the MSRB agrees.

#### New Issue Information Necessary for Trade Reporting

To ensure that all information necessary for transaction reporting is made available to market participants as quickly as possible, the March 2007 draft amendments would require underwriters to transmit to NIIDS all new issue information designated in the NIIDS system as necessary for “Trade Eligibility” no later than two hours of the Time of Formal Award and include the Time of Formal Award (or the planned Time of Formal Award) as part of the information transmitted to NIIDS. The MSRB requested comment on whether the two-hour period after the Time of Formal Award for completing the information submission to NIIDS would be sufficient and whether the time period should be different for negotiated and competitive underwritings.

Commentators were supportive of the two-hour timeframe for completing the communication to NIIDS of new issue information designated as necessary for “Trade Eligibility” for negotiated issues. However, Lehman proposed a longer period of three hours for competitive issues, citing inefficient communication with issuers who do not retain professional financial services. Wiley Bros. suggested revisiting the issue after the system has been implemented for a six-month period to determine whether the two hour period should be shortened or lengthened. The MSRB notes that it will review the deadlines in the proposed rule change once NIIDS is implemented and dealers gain system experience.

#### Time of First Execution and Advance Notification Requirements

To ensure that dealers that are not part of the underwriting group for the new issue are apprised of the time that the underwriter will initiate trade executions in the new issue and to ensure that those dealers will be prepared to process and report their own transactions in a timely manner, the March 2007 draft amendments included a requirement for underwriters to disseminate the Time of First Execution through NIIDS and provide a Time of First Execution that is no earlier than two hours after all required new issue information has been provided to NIIDS.

The MSRB noted that, while electronically formatted information can be retransmitted immediately, it believes that the two-hour advance notification period prior to the Time of First Execution would be sufficient for vendors, dealers, and service bureaus to receive and enter information disseminated from NIIDS into their own systems. While all comments received on the two-hour advance notification period prior to the Time of First Execution indicate support, First Southwest noted that this timeframe should “be reviewed as the industry gains experience with the NIIDS submission process.” Similarly, SIFMA commented that “it may be useful for the MSRB to have the flexibility to make adjustments in response to circumstances” that may arise after continued use of the NIIDS system. The MSRB notes that it will review the two hour advance notification period once NIIDS is implemented and dealers gain system experience.

#### Timely Trade Reporting and Underwriter Flexibility

For the various requirements for submitting information to NIIDS and setting a Time of First Execution, the March 2007 draft amendments state that only the hours between 9:00 A.M. and 5:00 P.M. Eastern Time on an RTRS Business Day are counted. A major implication of this is that an underwriter that does not obtain and transmit all required data elements to NIIDS by 3:00 P.M. Eastern Time would not be able to set a Time of First Execution on that day.

The MSRB noted that this may present difficulties for West Coast underwriters, and requested suggestions for alternative approaches to help address time zone issues. Lehman and Wiley Bros. agreed that the 9:00 A.M. to 5:00 P.M. hours are sufficient, adding only that “a provision should be included for ‘early closes.’”

#### Proposed Effective Dates of the Draft Amendments

The MSRB requested comment on how much lead time would be necessary for underwriters to implement the changes required to use the NIIDS system and for dealers to implement the CTC indicator. Most commentators noted that it is difficult to commit to a time frame until NIIDS has been implemented and experience with the system has been gained. Lehman noted that “as this a major change in the way of doing business, a long lead time would be warranted.” First Southwest and SIFMA both noted that at least six months should be allowed after NIIDS is implemented for dealers to program the changes required.

Roosevelt and Cross suggested a tiered approach for requiring the submission of NIIDS data requirements, citing potential “unfair processing burdens on managing underwriters.” Roosevelt and Cross proposed splitting the required data elements into two components, requiring only data elements essential to completing the transaction to be inputted at the time of sale and the remaining elements within 24 hours. The MSRB notes that a SIFMA / DTCC task force identified the data elements about a new issue as necessary for automated trade processing of when-issued trades. This information is designated in NIIDS as information necessary for “Trade Eligibility.” While the MSRB recognizes that the proposed rule change would represent a significant change for

underwriters, one of the objectives is to ensure that all dealers have access to information necessary to process and report trades in new issues in real-time.

#### Short-Term Instruments with Less than Nine Months in Effective Maturity

The MSRB also requested comment on whether certain types of new issues of municipal securities have special characteristics or use different “bookrunning” services that would present difficulties for underwriters to comply with the draft amendments to Rule G-34. SIFMA stated that short-term instruments with less than nine months in effective maturity, such as variable rate instruments, auction rate products and commercial paper, “each have operational issues that present problems distinct from long-term fixed-rate securities” that would make complying with the NIIDS data dissemination requirement difficult. SIFMA noted that “intermediaries may not be available to process the fields for Trade Eligibility with the result that underwriters may themselves be required to populate the fields and have systems in place to enter the data in the two hour period allowed by the proposed rule.”

The MSRB notes that trades in short-term instruments with less than nine months in effective maturity qualify for an end-of-day exception from real-time transaction reporting. Therefore, one of the primary purposes of the March 2007 draft amendments, to improve timely real-time transaction reporting of new issues, does not necessarily apply. While underwriters would be able to manually input information about a new issue to NIIDS through a web interface, the MSRB believes that the burden of complying with the requirement in the March 2007 draft amendments to transmit to NIIDS all new issue information designated as necessary for “Trade Eligibility” no later than two hours of the Time of Formal Award for short term instruments with less than nine months in effective maturity would not be warranted given the marginal benefit to price transparency that would be achieved. The MSRB decided that the NIIDS data dissemination requirement for new issues that have an effective maturity of nine months or less should be phased in at a later time once intermediaries or dealer systems are able to submit information about such securities to NIIDS electronically.<sup>14</sup>

#### **6. Extension of Time Period of Commission Action**

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Act.

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<sup>14</sup> The MSRB notes that Trade Eligibility information on short term instruments with less than nine months in effective maturity would still be required to be submitted to DTCC in connection with an underwriter’s requirement to apply for depository eligibility under Rule G-34(a)(ii)(A), but would not be subject to the requirement to communicate such information not later than two hours after the Time of Formal Award.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

1. Federal Register Notice
2. Notice requesting comment on the March 2007 draft amendments and comment letters

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. **SR-MSRB-2007-08**]

**SELF-REGULATORY ORGANIZATIONS**

Proposed Rule Change to MSRB Rule G-8, Books and Records, Rule G-9, Preservation of Records, and Rule G-34, CUSIP Numbers and New Issue Requirements, to Improve Transaction Reporting of New Issues.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. 78s(b)(1), and Rule 19b-4, 17 C.F.R. 240.19b-4, notice is hereby given that on November 27, 2007, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in items I, II, and III below, which items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB is filing with the Commission a proposed rule change consisting of an amendment of its Rule G-8, Books and Records, Rule G-9, Preservation of Records, and Rule G-34, CUSIP Numbers and New Issue Requirements. The proposed rule change is designed to improve transaction reporting of new issues and would accelerate the timing

for CUSIP number assignment and, with the exception of new issues of short-term instruments with less than nine months in effective maturity, require underwriters to: (i) submit certain information about a new issue of municipal securities to Depository Trust and Clearing Corporation's New Issue Information Dissemination System within set timeframes; and (ii) set and disseminate a "Time of First Execution" that allows time for market participants to access necessary information in preparation for trade reporting prior to beginning trade executions in the issue. The MSRB proposes an effective date for this proposed rule change of June 30, 2008. 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.

**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 Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

MSRB Rule G-14, on transaction reporting, requires all brokers, dealers and municipal securities dealers (“dealers”) to report all transactions in municipal securities to the MSRB Real-Time Transaction Reporting System (“RTRS”) within fifteen minutes of the time of trade execution, with limited exceptions. One exception listed in Rule G-14 RTRS Procedures, paragraph (a)(ii) is a “three-hour exception” that allows a dealer three hours to report a transaction in a when, as and if issued (“when-issued”) security if all of the following conditions apply: (i) 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; (ii) the dealer has not traded the issue in the previous year; and (iii) the dealer is not a syndicate manager or syndicate member for the issue.<sup>1</sup>

The three-hour exception was designed to give a dealer time to add a security to its “securities master file” so that a trade can be reported through the dealer’s automated trade processing systems. A securities master file contains the information about a municipal security issue that is necessary for a dealer to be able to process transactions in the issue. It includes such items as the interest rate, dated date, interest payment cycle, and put and call schedules. The dealer’s securities master file often contains information only for securities held in custody for customers and for securities that have been recently traded. If a dealer trades a security that is not in its securities master file, the relevant

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<sup>1</sup> Another exception is an end-of-day deadline for reporting trades in short-term instruments under nine months in effective maturity, including variable rate instruments, auction rate products, and commercial paper.

securities information must be obtained by the dealer from an information vendor before the trade can be processed and reported.<sup>2</sup>

For new issue transactions, a dealer's access to necessary securities information depends not only on its link with an information vendor but also on whether that vendor itself has the information on the new issue. Vendors currently obtain much of their new issue information through voluntary cooperation from underwriters. This process does not always result in all the vendors having the necessary securities information by the time trade executions begin. Dealers trading a new issue for the first time need the three-hour exception from the fifteen-minute trade reporting requirement for their first trades in a new issue because the securities information is not always available at the time the trade is executed.<sup>3</sup>

To address inefficiencies in the collection of new information securities data, Securities Industry and Financial Markets Association ("SIFMA"), industry members, securities information vendors, and other service providers in the municipal securities market have worked extensively with The Depository Trust and Clearing Corporation ("DTCC") to develop a centralized system for collecting and communicating new issue

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<sup>2</sup> Many dealers use service bureaus for various trade processing functions, including the maintenance of securities master files. Securities master file update procedures for service bureaus are the same as those described for dealers.

<sup>3</sup> In the new issue market, information vendors seek to collect information on each issue and deliver it to customers in time for trade reporting in the new issue. There are several challenges for vendors and dealers to meet the reporting deadlines. For example, there are approximately 15,000 new municipal issues that must be set up in databases each month. Another problem for the industry is the fact that approximately 85 different information fields for each issue must be successfully gathered, which in large part depends on the timely cooperation of the underwriters.

securities information. The system, called the “New Issue Information Dissemination System” (“NIIDS”), will be operated by DTCC and will act as a central collection point for standardized electronic files of new issue information provided by underwriters which will be disseminated in real-time to information vendors.

Although the amount of securities information needed for trade reporting under Rule G-14 is limited,<sup>4</sup> many of the automated trade processing systems used to report trades currently need more extensive securities information (essentially the information necessary to produce a trade confirmation) before a trade can be reported. The industry initiative on NIIDS has resulted in a relatively comprehensive list of new issue securities data that will be collected and disseminated by NIIDS, including Time of Formal Award and Time of First Execution, discussed below. DTCC plans to implement NIIDS in early 2008.<sup>5</sup>

The proposed rule change is designed to improve new issue transaction reporting through requiring underwriter participation with NIIDS. The proposed rule change prescribes timetables for submission of data to NIIDS and other underwriter procedures that are intended to ensure that all dealers have timely access to the new issue

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<sup>4</sup> RTRS only requires dealers to include limited information on trade reports in when-issued securities, such as the CUSIP number of the security traded, the par value of the transaction, and the transaction price expressed as either yield or dollar price.

<sup>5</sup> In addition to providing an improved mechanism for disseminating the new issue information necessary for trade processing, the system also would use the information for purposes of establishing depository eligibility for new issues. DTCC plans to require use of the New Underwriting System (“NUWS”), of which NIIDS is a component, beginning in April 2008.

information that is needed for compliance with trade reporting requirements. The MSRB proposes a June 30, 2008 effective date for the proposed rule change.<sup>6</sup>

#### **AMENDMENTS TO RULE G-34**

Currently, Rule G-34 requires underwriters<sup>7</sup> to apply for CUSIP numbers within specific deadlines and to transmit a limited amount of information about a new issue such as the coupons, maturities and issue closing date to DTCC. The rule also contains a requirement for Time of Formal Award to be disseminated to market participants that may trade the new issue. The proposed rule change would accelerate the timing for CUSIP number assignment and, with the exception of new issues of short-term instruments with less than nine months in effective maturity, require underwriters to: (i) submit certain information about a new issue of municipal securities to DTCC's NIIDS System within set timeframes; and (ii) set and disseminate a "Time of First Execution" that allows time for market participants to access necessary information in preparation for trade reporting prior to beginning trade executions in the issue.

#### Timing of CUSIP Number Assignment

<sup>6</sup> NIIDS, in conjunction with MSRB rules, should make it possible for dealers to report new issue trades earlier and thus eliminate the need for the three-hour exception for when-issued trade reports. Accordingly, the MSRB has filed with the SEC a proposed rule change to sunset the "three-hour exception" on June 30, 2008, to coincide with the effective date of the proposed rule change. *See* SR-MSRB-2007-07.

<sup>7</sup> Rule G-34 defines "underwriter" very broadly to include a dealer acting as a placement agent as well as any dealer purchasing new issue securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the "underwriter" for purposes of Rule G-34.

CUSIP numbers are a required data element for automated trade processing and trade reporting systems and will be a prerequisite for entry of new issue information into NIIDS. Timely processing of new issue transactions requires that CUSIP numbers be assigned as early as possible in the underwriting process. Rule G-34 contains various requirements for underwriters, and for dealers acting as financial advisors on competitive sales, to apply to the CUSIP Service Bureau for CUSIP number assignment. The current deadlines are based on: the time the bond purchase agreement is executed (for underwriters in negotiated sales); the time of the issuer's award (for dealers acting as financial advisors in competitive sales); and the time of the first execution of a trade in the issue (for underwriters in competitive sales). The proposed rule change would set new deadlines designed to ensure CUSIP number assignment occurs as soon as possible in the underwriting process, allowing for the timely submission of new issue information to NIIDS.

For negotiated issues, the proposed rule change would require that an application must be made no later than the time that the pricing information for the issue is determined. For a dealer acting as a financial advisor on a competitive deal, the proposed rule change would require an application for CUSIP number assignment to be made within one business day of dissemination of a notice of sale. The proposed rule change also states a general requirement that the underwriter on a negotiated underwriting and a

dealer acting as a financial advisor on a competitive deal would be required to ensure that final CUSIP number assignment occurs prior to the formal award of the new issue.<sup>8</sup>

Rule G-34 currently requires the underwriter in a competitive sale to apply for CUSIP numbers if an application has not already been made by the issuer or the issuer's representative. The MSRB understands that CUSIP numbers for competitively sold issues generally are assigned by the date of sale, but that on occasion this is not done.<sup>9</sup> Dealers have noted that, in these situations, automated trade processing and real-time trade reporting for the issue may be delayed because of the time necessary for the underwriter to obtain CUSIP numbers after the formal award. The proposed rule change would clarify the underwriter's existing responsibility in such situations to apply for CUSIP numbers immediately after receiving the award.

#### Underwriter Requirement to Provide Information to NIIDS within Certain Deadlines

The proposed rule change would require underwriters to transmit new issue information to NIIDS within deadlines that are intended to ensure that the information

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<sup>8</sup> Under existing provisions of Rule G-34, dealers frequently apply for CUSIP numbers before interest rates are determined. In these cases, the dealer must provide the final interest rate information as soon as it becomes available. The proposed rule change would clarify that a dealer must update any of the required information that changes after an initial application as soon as the new information becomes available.

<sup>9</sup> As noted above, in competitive sales where a dealer serves as financial advisor, Rule G-34 requires the dealer to apply for CUSIP numbers. However, in competitive sales where there is no dealer financial advisor, there is no other dealer associated with the issue prior to the date of sale that can be charged under MSRB rules with the responsibility to make a pre-sale application for CUSIP numbers.

reaches information vendors and is further re-disseminated for use in automated trade processing systems by the time that trade executions begin in a new issue. The specific items of information required to be submitted are those generally considered necessary for automated trade processing in an issue and are designated in the NIIDS system as items necessary for “Trade Eligibility.”

Underwriters would be required to submit this information electronically in accordance with the methods and formats stated for NIIDS system users. The information could be provided through computer-to-computer links or through a web interface allowing manual input of data. Although the underwriter would be ultimately responsible for timely, comprehensive and accurate data submission, the proposed rule change would allow for use of an intermediary to accomplish this function.<sup>10</sup>

NIIDS is designed so that, once CUSIP numbers are assigned to a new issue, information about the issue can be submitted as it becomes available. The proposed rule change would require underwriters to provide information specified by NIIDS as required for Trade Eligibility as soon as it is available, with a final deadline for all such information to be provided no later than two hours after the Time of Formal Award, which would be redefined as discussed below. The proposed rule change also states that only the hours between 9:00 A.M. and 5:00 P.M. Eastern on an RTRS Business Day are counted for purposes of the time tables listed in the draft amendments. For example, if the Time of Formal Award occurs at 6:00 P.M. Eastern, the time tables listed in the

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<sup>10</sup> Several industry vendors that provide “bookrunning” services to underwriters on new issues have indicated that they plan to offer a service to transmit information about a new issue to NIIDS on behalf of the underwriter.

proposed rule change would not commence until 9:00 A.M. Eastern on the next RTRS Business Day.

Revised Definition of “Time of Formal Award”

The Time of Formal Award represents the earliest time that a dealer can execute transactions in a new issue and is used currently in Rule G-34 and in the proposed rule change to set certain deadlines. The proposed rule change includes a minor change to the current definition of “Time of Formal Award” for purposes of Rule G-34 timetables. The MSRB understands that underwriters are not always present at the time the issuer executes a bond purchase agreement or formally confirms an award of a competitive issue. Some time may elapse between this time and the time at which the underwriter becomes aware of the issuer’s action and this delay may not be under the control of the underwriter. To address this issue, the proposed rule change states that for purposes of Rule G-34, “Time of Formal Award” is defined as:

- for competitive issues, the later of the time the issuer formally awards the issue or the time the issuer notifies the underwriter of the award; and,
- for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution of the agreement.

The Time of Formal Award is one of the required information items to be submitted to NIIDS. Therefore, it would be subject to the general requirement to be submitted as soon as it is available as well as the ultimate deadline for submission of all required data, which is two hours after the Time of Formal Award. These requirements should ensure that all information necessary for trade reporting is available through NIIDS no later than two hours after the Time of Formal Award.

“Time of First Execution” and Advance Notification Requirement

The second major component of the amendments to Rule G-34 is an advance notification requirement that would ensure that all dealers have advance notification of the underwriter’s planned time for first trade executions and can be prepared to process trade executions by that time. The MSRB understands that under current industry practices, underwriters do not always disseminate the time that they intend to begin trade executions. Consequently, dealers that are not in the underwriting group sometimes do not know when their own transactions in the issue should begin and this may negatively affect the ability of those dealers to report their initial transactions in a timely and accurate manner or to coordinate their reported time of trade execution on inter-dealer transactions with members of the underwriting group.

To address this concern, the proposed rule change would require the underwriter of a new issue to disseminate the “Time of First Execution,” which is the underwriter’s anticipated time for beginning trade executions in a new issue. Once an underwriter has completed the submission of all required information to NIIDS, the information then will

need to be re-disseminated to other dealers that may have trades in the issue and these dealers (and service bureaus) will need to “set up” automated trade processing systems with the new issue information. To allow time for this process to occur, the underwriter would be required to provide a Time of First Execution that is at least two hours after the time that all required information is provided to NIIDS.

The proposed rule change would accommodate several situations that may occur in the underwriting of new issues of municipal securities. For example, the underwriter would be allowed to submit an anticipated Time of Formal Award rather than wait for the actual Time of Formal Award if the underwriter and issuer have agreed in advance on a Time of Formal Award. This may be the case if the formal award is a scheduled pro forma requirement by an issuer’s governing body and all details necessary for the formal award have been finalized and submitted to NIIDS in advance. The underwriter could in this case complete its submission to NIIDS using the anticipated Time of Formal Award. By doing this, the underwriter could schedule its Time of First Execution to occur immediately after the formal award, rather than waiting two hours. Any changes to these times would require correction in NIIDS as soon as known. As long as the two-hour notification period has been met once, however, it would not be necessary to start a new notification period as a result of minor adjustments to the Time of Formal Award or Time of First Execution.

#### **AMENDMENTS TO RULES G-8 AND G-9**

The proposed rule change includes amendments to the MSRB’s recordkeeping rules that would require an underwriter to retain for three years a record of the Time of

Formal Award, a copy of the notification from DTCC indicating that a new issue received Trade Eligibility status in NIIDS and the Time of First Execution. This would provide a record showing whether the underwriter provided information necessary for Trade Eligibility no later than two hours after the Time of Formal Award and whether the underwriter provided at least two hours advance notification of the Time of First Execution.

## **2. Statutory Basis**

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

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

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.

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

The MSRB does not believe the proposed rule change will impose any burden on competition since it would apply equally to all brokers, dealers and municipal securities dealers.

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

On March 5, 2007, the MSRB published for comment an exposure draft of the proposed rule change<sup>11</sup> (the “March 2007 draft amendments”).<sup>12</sup> While the MSRB did not request comment on the amendments to Rule G-8 and G-9, these amendments were included in the proposed rule change to provide enforcement agencies with information necessary to gauge compliance with the amendments to Rule G-34.

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<sup>11</sup> See MSRB Notice 2007-10 (March 5, 2007).

<sup>12</sup> The March 2007 draft amendments also included amendments to Rule G-14 that would create a new Conditional Trading Commitment (CTC) special condition indicator. The CTC indicator is not included in the proposed rule change as it is still under consideration by the MSRB.

<sup>13</sup> A copy of the notice requesting comment on the March 2007 draft amendments and the comment letters received are included as Exhibit 2.

While many of the commentators made specific suggestions on details of the March 2007 draft amendments, commentators were generally supportive. SIFMA “supports ... efforts by the MSRB to improve the efficiency of new issue information to the market necessary for dealers to comply with price reporting requirements.” Hilliard Lyons stated “the centralization of an electronic system for new issue trade processing is a change that the industry has been eager for implementation ... [and the MSRB’s] proposal would alleviate the duplication of information that is sent to numerous vendors and would cut down on the time needed to process new issues.” Roosevelt and Cross agreed “with the philosophy of a central issue facility, which would make more information available on a timely basis and would increase transparency in the municipal marketplace.”

#### Timing of CUSIP Number Assignment

CUSIP numbers are a required data element for automated trade processing and reporting systems and are a prerequisite for entry of new issue information into NIIDS. Rule G-34 currently requires that CUSIP numbers be assigned prior to the Time of Formal Award for underwriters of negotiated issues and for dealer financial advisors on competitive issues. The March 2007 draft amendments included new deadlines designed to ensure that CUSIP number assignment occurs as soon as possible in the underwriting so that information submission to NIIDS could occur as early as possible. The March 2007 draft amendments stated the following requirements:

- Managing underwriter of negotiated issue – apply for CUSIP number assignment within one business day of dissemination of a Preliminary Official Statement (POS); for issues sold without a POS, apply no later than the time pricing information is finalized.
- Dealer financial advisor on competitive issue – apply for CUSIP number assignment within one business day of dissemination of a POS; for issues sold without a POS, apply within one business day of a notice of sale.
- Managing underwriter of competitive issue with no pre-assigned CUSIP numbers – apply immediately after receiving notification of award and ensure that CUSIP numbers are assigned prior to transmitting Time of First Execution to NIIDS.

While CUSIP stated that it “has always encouraged industry participants to apply for CUSIP numbers as early as possible” and supports the proposed changes to Rule G-34 that would advance the timing of CUSIP number assignment, several commentators opposed a requirement to apply for CUSIP numbers earlier in an underwriting. SIFMA and First Southwest recommended that the existing requirements for CUSIP number assignment remain unchanged because information about a new issue is not always final at the time of the dissemination of a POS. SIFMA stated that “the maturity schedule in a POS is tentative and very likely to change requiring underwriters to revise the application” and noted that “while CUSIP numbers can be revised, the revisions result in numbers being out of sequence, and out of sequence numbers raise questions by investors and traders, as well as complicating operations.” SIFMA noted that underwriters that want to set an early Time of First Execution would be required to apply for CUSIP

numbers earlier than is currently required under Rule G-34; however, while this may occur in some instances, the MSRB believes that many underwriters will continue to postpone making an application for CUSIP number assignment until shortly before the Time of Formal Award.

If a POS is not disseminated on a new issue, the March 2007 draft amendments included an alternative deadline for making a CUSIP number application. For a negotiated issue, the March 2007 draft amendments proposed requiring an underwriter to apply for CUSIP numbers at the time that pricing information is determined. For a dealer financial advisor on a competitive issue, the March 2007 draft amendments proposed requiring the dealer financial advisor to apply for CUSIP numbers within one business day of a notice of sale. The MSRB decided to use these alternative deadlines in the proposed rule change as they occur later in an underwriting than the time that a POS would typically be disseminated, but in advance of the Time of Formal Award, and should have the desired effect of advancing the timing of CUSIP number assignment.

#### Definition of “Time of Formal Award”

The March 2007 draft amendments revised the definition of “Time of Formal Award” to take into consideration that time may elapse between the time of the issuer’s action and the time the underwriter becomes aware of the issuer’s action. Although commentators were supportive of the revised definition of Time of Formal Award, SIFMA clarified that for a competitive transaction they “interpret time of formal award not to occur before there is a set quantity and price,” a definition with which the MSRB agrees.

New Issue Information Necessary for Trade Reporting

To ensure that all information necessary for transaction reporting is made available to market participants as quickly as possible, the March 2007 draft amendments would require underwriters to transmit to NIIDS all new issue information designated in the NIIDS system as necessary for “Trade Eligibility” no later than two hours of the Time of Formal Award and include the Time of Formal Award (or the planned Time of Formal Award) as part of the information transmitted to NIIDS. The MSRB requested comment on whether the two-hour period after the Time of Formal Award for completing the information submission to NIIDS would be sufficient and whether the time period should be different for negotiated and competitive underwritings.

Commentators were supportive of the two-hour timeframe for completing the communication to NIIDS of new issue information designated as necessary for “Trade Eligibility” for negotiated issues. However, Lehman proposed a longer period of three hours for competitive issues, citing inefficient communication with issuers who do not retain professional financial services. Wiley Bros. suggested revisiting the issue after the system has been implemented for a six-month period to determine whether the two hour period should be shortened or lengthened. The MSRB notes that it will review the deadlines in the proposed rule change once NIIDS is implemented and dealers gain system experience.

Time of First Execution and Advance Notification Requirements

To ensure that dealers that are not part of the underwriting group for the new issue are apprised of the time that the underwriter will initiate trade executions in the new issue and to ensure that those dealers will be prepared to process and report their own transactions in a timely manner, the March 2007 draft amendments included a requirement for underwriters to disseminate the Time of First Execution through NIIDS and provide a Time of First Execution that is no earlier than two hours after all required new issue information has been provided to NIIDS.

The MSRB noted that, while electronically formatted information can be retransmitted immediately, it believes that the two-hour advance notification period prior to the Time of First Execution would be sufficient for vendors, dealers, and service bureaus to receive and enter information disseminated from NIIDS into their own systems. While all comments received on the two-hour advance notification period prior to the Time of First Execution indicate support, First Southwest noted that this timeframe should “be reviewed as the industry gains experience with the NIIDS submission process.” Similarly, SIFMA commented that “it may be useful for the MSRB to have the flexibility to make adjustments in response to circumstances” that may arise after continued use of the NIIDS system. The MSRB notes that it will review the two hour advance notification period once NIIDS is implemented and dealers gain system experience.

#### Timely Trade Reporting and Underwriter Flexibility

For the various requirements for submitting information to NIIDS and setting a Time of First Execution, the March 2007 draft amendments state that only the hours

between 9:00 A.M. and 5:00 P.M. Eastern Time on an RTRS Business Day are counted. A major implication of this is that an underwriter that does not obtain and transmit all required data elements to NIIDS by 3:00 P.M. Eastern Time would not be able to set a Time of First Execution on that day.

The MSRB noted that this may present difficulties for West Coast underwriters, and requested suggestions for alternative approaches to help address time zone issues. Lehman and Wiley Bros. agreed that the 9:00 A.M. to 5:00 P.M. hours are sufficient, adding only that “a provision should be included for ‘early closes.’”

#### Proposed Effective Dates of the Draft Amendments

The MSRB requested comment on how much lead time would be necessary for underwriters to implement the changes required to use the NIIDS system and for dealers to implement the CTC indicator. Most commentators noted that it is difficult to commit to a time frame until NIIDS has been implemented and experience with the system has been gained. Lehman noted that “as this a major change in the way of doing business, a long lead time would be warranted.” First Southwest and SIFMA both noted that at least six months should be allowed after NIIDS is implemented for dealers to program the changes required.

Roosevelt and Cross suggested a tiered approach for requiring the submission of NIIDS data requirements, citing potential “unfair processing burdens on managing underwriters.” Roosevelt and Cross proposed splitting the required data elements into two components, requiring only data elements essential to completing the transaction to be inputted at the time of sale and the remaining elements within 24 hours. The MSRB

notes that a SIFMA / DTCC task force identified the data elements about a new issue as necessary for automated trade processing of when-issued trades. This information is designated in NIIDS as information necessary for “Trade Eligibility.” While the MSRB recognizes that the proposed rule change would represent a significant change for underwriters, one of the objectives is to ensure that all dealers have access to information necessary to process and report trades in new issues in real-time.

#### Short-Term Instruments with Less than Nine Months in Effective Maturity

The MSRB also requested comment on whether certain types of new issues of municipal securities have special characteristics or use different “bookrunning” services that would present difficulties for underwriters to comply with the draft amendments to Rule G-34. SIFMA stated that short-term instruments with less than nine months in effective maturity, such as variable rate instruments, auction rate products and commercial paper, “each have operational issues that present problems distinct from long-term fixed-rate securities” that would make complying with the NIIDS data dissemination requirement difficult. SIFMA noted that “intermediaries may not be available to process the fields for Trade Eligibility with the result that underwriters may themselves be required to populate the fields and have systems in place to enter the data in the two hour period allowed by the proposed rule.”

The MSRB notes that trades in short-term instruments with less than nine months in effective maturity qualify for an end-of-day exception from real-time transaction reporting. Therefore, one of the primary purposes of the March 2007 draft amendments, to improve timely real-time transaction reporting of new issues, does not necessarily

apply. While underwriters would be able to manually input information about a new issue to NIIDS through a web interface, the MSRB believes that the burden of complying with the requirement in the March 2007 draft amendments to transmit to NIIDS all new issue information designated as necessary for “Trade Eligibility” no later than two hours of the Time of Formal Award for short term instruments with less than nine months in effective maturity would not be warranted given the marginal benefit to price transparency that would be achieved. The MSRB decided that the NIIDS data dissemination requirement for new issues that have an effective maturity of nine months or less should be phased in at a later time once intermediaries or dealer systems are able to submit information about such securities to NIIDS electronically.<sup>14</sup>

**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 June 30, 2008. 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

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<sup>14</sup> The MSRB notes that Trade Eligibility information on short term instruments with less than nine months in effective maturity would still be required to be submitted to DTCC in connection with an underwriter’s requirement to apply for depository eligibility under Rule G-34(a)(ii)(A), but would not be subject to the requirement to communicate such information not later than two hours after the Time of Formal Award.

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

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number **SR-MSRB-2007-08** 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-2007-08**. 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 principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number **SR-MSRB-2007-08** and should be submitted on or before within [insert date twenty-one days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris

Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

**MSRB NOTICE 2007-10 (MARCH 5, 2007)****REQUEST FOR COMMENT ON PROPOSED RULE  
CHANGES TO IMPROVE TRANSACTION  
REPORTING OF NEW ISSUE MUNICIPAL  
SECURITIES**[Home Page](#) | [Back](#)

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on proposed rule changes to improve the trade reporting and price transparency of transactions effected in new issues of municipal securities. The proposed rule changes include draft amendments to Rule G-34, on CUSIP Numbers and New Issue Requirements, that would require underwriters to follow certain procedures for disseminating new issue information necessary for trade reporting in the issues. The notice also includes a proposed requirement for a special indicator on reports of new issue transactions that are based on priced trading commitments made prior to the formal award of a new issue. This proposed requirement is a revised version of one first proposed for comment in April 2006, and would apply to brokers, dealers and municipal securities dealers ("dealers") reporting trades under Rule G-14.

Although the proposed rule changes are primarily operational in nature, they would affect basic underwriting practices such as the scheduling and announcement of initial trade executions in a new issue. The proposed rule changes also present important price transparency issues relating to transactions that are priced at a time significantly prior to the time that the transactions are executed and reported. Comment is requested from market participants on all aspects of the proposed rule changes, including other measures that could improve the timeliness and quality of price transparency information for new issues.

Comments on the proposed rule changes should be submitted to the MSRB by May 3, 2007 and may be directed to Justin R. Pica, Uniform Practice Policy Advisor.

**SUMMARY OF PROPOSED RULE CHANGES**

The draft amendments to Rule G-34 would require underwriters to utilize a new centralized electronic system for improved dissemination of the new issue information necessary for trade processing and trade reporting in new issues. The system, called the "New Issue Information Dissemination System" ("NIIDS"), will be operated by Depository Trust and Clearing Corporation ("DTCC") and is the result of a broad-based industry initiative that has taken place over the past two years. The system is designed to serve as a central point for accepting standardized new issue information from underwriters and immediately disseminating the data in electronic form to information vendors for further re-dissemination.

The draft amendments would require underwriters to submit certain new issue information to NIIDS, either directly or through intermediaries. This information includes the securities data that is typically required by the automated trade processing and reporting systems used by dealers, and certain other new issue information defined in the draft amendments. The draft amendments prescribe timetables for data submission and other underwriter procedures that are intended to ensure that all dealers have timely access to the new issue information that is needed for compliance with trade reporting requirements.

**Special Indicator for "CTC Transactions"**

This notice also requests comment on a revised version of a requirement to identify certain new issue transactions called "Conditional Trading Commitment transactions" ("CTC transactions") with a special indicator in the trade reports made under Rule G-14. A "CTC transaction" is defined as "any transaction that is based upon a priced trading commitment made prior to the 'Time of Formal Award' for a new issue." Because dealers generally cannot execute a transaction in a new issue prior to the formal award, these transactions may have prices that are significantly "stale" in relation to the reported time of execution. Under existing transaction reporting procedures, these are sometimes indistinguishable from other transactions that reflect more current market pricing activity. The proposed special condition indicator would allow

identification of prices that are associated with CTC transactions and that have the potential to be significantly stale.

The special condition indicator for CTC transactions initially was proposed for comment in April 2006. Among other points, commentators noted that operational issues, including the lack of timely and reliable information on "Time of Formal Award," would make it difficult or impossible for dealers to comply with the requirement until NIIDS becomes operational. The draft amendments to Rule G-34 are designed to address operational issues associated with the proposal by amending the definition of "Time of Formal Award" and by requiring underwriters to disseminate that time through NIIDS within two hours of its occurrence. The special indicator requirement also has been revised to provide an end-of-day trade reporting deadline for CTC transactions.

Although the proposed rule changes would allow the identification of stale prices, they do not generally address the underlying market practices that create stale-priced trade reports. The final section of this notice discusses the factors that create CTC transactions and requests comment on other measures that might improve price transparency of transactions in new issues of municipal securities.

#### **Draft Amendments to Rule G-34**

The draft amendments to Rule G-34 contain a general requirement for underwriters to ensure that certain new issue information is submitted to NIIDS as soon as possible in the underwriting process. The required information would include certain securities information necessary for automated trade processing, the "Time of Formal Award" and the "Time of First Execution." Because CUSIP numbers are a prerequisite for providing any of this information, the draft amendments would accelerate the CUSIP application deadlines in Rule G-34, in most cases requiring that the application be made within one business day after dissemination of a Preliminary Official Statement.

The proposed outside deadline for completing the submission of all required information to NIIDS is two hours after the "Time of Formal Award." This term is re-defined in the draft amendments as: (i) for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award; and (ii) for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. The outside deadline for the NIIDS data submission would help ensure that dealers in all cases can identify CTC transactions and be prepared to process and report transactions within a reasonable period of time after the underwriter becomes aware of the formal award of the issue.

The second major objective of the draft amendments is to provide an "advance notification" requirement for underwriters. Included in the information that the underwriter must submit to NIIDS within two hours of the Time of Formal Award is the "Time of First Execution," which is defined as the time the underwriter plans to execute its first transactions in the new issue. The draft amendments provide that an underwriter's "Time of First Execution" must be at least two hours after all necessary new issue information has been submitted to NIIDS. The advance notice requirement is intended to ensure that all dealers are aware of the time that an underwriter intends to initiate its transactions in a new issue and have time to prepare for trade processing and reporting in the issue.

The draft amendments propose several provisions to address specific situations that may occur in the underwriting process for municipal securities. Only the hours between 9:00 A.M. and 5:00 P.M. Eastern Time would be counted for purposes of the two-hour requirements in the draft amendments to ensure that NIIDS submissions are not required outside of normal business hours when the Time of Formal Award occurs late in the day. Situations also are addressed in which the formal award of an issue is a scheduled pro forma action by the issuing entity and the underwriter is able to announce a reasonably firm anticipated Time of Formal Award.

#### **Anticipated Implementation Schedule**

The effective date for the draft amendments to Rule G-34 is in part dependent upon the implementation of NIIDS, which at this time is scheduled for August 2007. The MSRB anticipates that it would be possible to implement the draft amendments immediately after the planned date for implementation of NIIDS in September 2007. The effective date for the revised CTC indicator is dependent both upon implementation of NIIDS and the draft amendments to Rule G-34. The MSRB anticipates that the CTC indicator could be implemented as early as January 2008. This

notice requests comment on the lead time that would be necessary to prepare for both of the proposed rule changes.

## **BACKGROUND**

Under MSRB Rule G-14, on transaction reporting, all brokers, dealers and municipal securities dealers ("dealers") are required, with limited exceptions, to report transactions in municipal securities within 15 minutes of trade execution. The Real-Time Transaction Reporting System ("RTRS") receives these trade reports and disseminates them immediately to provide market price transparency. The transaction reporting procedures under Rule G-14 allow dealers to report certain primary market transactions effected at the published list offering and at syndicate takedown prices at the end of the day.[1] However, the initial transactions that do not qualify for one of these exceptions generally must be reported within 15 minutes of trade execution.[2] This requirement is intended, among other things, to make secondary market transactions in a new issue transparent within 15 minutes of trade execution and thus to provide real-time information on current market pricing activity.[3]

### **Expiration of Three-Hour Exception in Trade Reporting Rules**

In connection with previous rulemaking, the MSRB has received a number of comments noting that dealers often lack timely access to electronically formatted securities information necessary to process and report municipal securities transactions in a real-time environment. Based on comments received in connection with the January 2005 implementation of real-time transaction reporting requirements, the MSRB included a temporary "three-hour exception" in Rule G-14, giving a dealer extra time to make a transaction report when the dealer does not have access to securities information necessary to make a trade report at the time of execution.[4] The MSRB noted that the exception was temporary and meant to allow the industry time to improve systems for delivering necessary securities information to dealers in time to meet the 15-minute reporting deadline.

In an October 2005 letter to the MSRB, the Bond Market Association ("TBMA")[5] noted that problems continued in obtaining timely access to securities information necessary for trade reporting, particularly the trade reporting of new issue transactions. TBMA requested that the MSRB extend the temporary three-hour exception and allow additional time for the industry to make improvements. The letter described industry efforts to work with DTCC to create a central system for collecting and disseminating securities information on new issues, which would allow more timely reports of new issue transactions. The letter also suggested that there would be a need for MSRB rules requiring underwriters to submit information to the system within specified timeframes. Based on TBMA's letter, the MSRB subsequently filed a rule change extending the three-hour exception for when-issued transactions through the end of 2007, noting that no further extensions would be added.[6]

### **Proposed Indicator for Conditional Trading Commitment Transactions**

A second issue that has been identified with respect to new issue price transparency is that some prices disseminated by RTRS may be significantly "stale" with respect to the reported time of execution. [7] The most significant delays between the pricing and execution of new issue transactions arise from trading commitments that are made by dealers in response to firm, priced orders received prior to the formal award of a new issue. Under existing MSRB rules, it is not possible for dealers to execute, confirm or report transactions in a new issue until after the formal award. For this and other reasons, the dealer's commitment to execute such an order is "conditional," meaning that the order will not be executed, if at all, until after the formal award of the issue is made. The MSRB accordingly has referred to these trading commitments as "conditional trading commitments" or "CTCs." As many as two days may elapse between the time that CTCs begin in the market and the time that the orders are ultimately executed as transactions. During this time significant numbers of CTC's may be pending for execution, including some representing secondary market pricing activity in a new issue. Moreover, it is not generally possible to distinguish these transaction reports from ones that represent current secondary market pricing activity occurring in the market.

In April 2006, the MSRB requested comment on a proposed special condition indicator to be used on trade reports of "CTC transactions." A "CTC transaction" was defined as any transaction priced prior to the "Time of Formal Award." The request for comment noted that the term "Time of Formal Award" is defined in Rule G-34 as: "(i) for competitive underwritings, the time that the issuer announces the award; and (ii) for negotiated underwritings, the time the contract to

purchase the securities from the issuer is executed.”

Comments received on the April 2006 proposal strongly suggested that dealer compliance with the proposed indicator requirement would be difficult or impossible due to the lack of any reliable and timely source of information on “Time of Formal Award” for new issues. Commentators also observed that, as a result of the time needed by an underwriter and other dealers to prepare trade processing systems for a new issue, a delay may exist between the Time of Formal Award and the time that an underwriter initiates the initial trade executions in a new issue. It was noted that transactions priced during this period also are stale, albeit to a lesser degree than CTC transactions, and suggested that the underwriter’s time of first execution should be used to identify stale-price transactions rather than the Time of Formal Award. TBMA’s comment also suggested that solutions to the operational problems in identifying stale-price transactions would depend on implementation of a central system for collecting and disseminating new issue information, which could provide a timely and reliable source of information such as the Time of Formal Award and the underwriter’s anticipated time for initial trade executions.

### **The NIIDS Initiative**

TBMA, industry members, securities information vendors and other service providers in the municipal securities market have worked extensively with DTCC over the past two years to develop a centralized system for collecting and communicating new issue securities information. As a result of this industry initiative, DTCC, a securities clearing agency registered with the SEC, plans to implement the New Issue Information Dissemination System or “NIIDS” in August 2007. In addition to providing an improved mechanism for disseminating the new issue information necessary for trade processing, the system also would use the information for purposes of establishing depository eligibility for new issues. The MSRB has noted the substantial progress that has been made on NIIDS and has alerted dealers to the importance of the initiative.[8]

Under current practices in the municipal securities market, each information vendor works separately to obtain information from offering documents and underwriters and each vendor’s success depends in large part on the voluntary cooperation of underwriters. It is not unusual for information vendors to have inconsistent information or for some information vendors to receive information before others. Consequently, critical new issue information may be missing or inaccurate in the automated trade processing systems used by dealers to report the initial trades in new issues. This situation frequently results in late trade reports or trade reports with inaccurate data that subsequently must be canceled and resubmitted or amended.

NIIDS is designed to improve the process by which new issue information is provided by underwriters to information vendors by collecting new issue information about a new issue from underwriters or their representatives in an electronic format, and then making that data immediately available to the information vendors that provide such information to market participants. The electronic techniques that will be used by NIIDS are designed to ensure that information is disseminated as quickly and efficiently as possible after the information is made available by underwriters

Although the amount of securities information needed for trade reporting under Rule G-14 is limited,[9] many of the automated trade processing systems used to report trades currently need more extensive securities information (essentially the information necessary to produce a trade confirmation) before a trade can be reported. The industry initiative on NIIDS has resulted in a relatively comprehensive list of new issue securities data that will be collected and disseminated by NIIDS, including Time of Formal Award and Time of First Execution. A listing of the new issue securities data that will be collected and disseminated by NIIDS is available on DTCC’s web site at: <http://www.dtcc.com/reengineering/underwriting/specs.html>.

### **DRAFT AMENDMENTS TO RULE G-34**

Currently, Rule G-34 requires underwriters[10] to apply for CUSIP numbers within specific deadlines and to transmit a limited amount of information about a new issue such as the coupons, maturities and issue closing date to DTCC. The rule also contains a requirement for Time of Formal Award to be disseminated to market participants that may trade the new issue. The draft amendments to Rule G-34 would: (i) accelerate the timing for CUSIP number assignment; (ii) require underwriters to submit certain new issue information to the NIIDS system for re-dissemination to market participants; and (iii) require underwriters to set and disseminate a “Time of First Execution” that allows time for market participants to access

necessary information in preparation for trade reporting prior to beginning trade executions in the issue.

### **Timing of CUSIP Number Assignment**

CUSIP numbers are a required data element for automated trade processing and trade reporting systems and will be a prerequisite for entry of new issue information into NIIDS. Timely processing of new issue transactions requires that CUSIP numbers be assigned as early as possible in the underwriting process. Rule G-34 contains various requirements for underwriters, and for dealers acting as financial advisors on competitive sales, to apply to the CUSIP Service Bureau for CUSIP number assignment. The current deadlines are based on: the time the bond purchase agreement is executed (for underwriters in negotiated sales); the time of the issuer's award (for dealers acting as financial advisors in competitive sales); and the time of the first execution of a trade in the issue (for underwriters in competitive sales). The draft amendments would set new deadlines designed to ensure CUSIP number assignment occurs as soon as possible in the underwriting process, allowing for the timely submission of new issue information to NIIDS.

The draft amendments would require the underwriter in a negotiated sale and a dealer acting as financial advisor on a competitive sale to make an initial application for CUSIP number assignment within one business day of the dissemination of any Preliminary Official Statement (POS) for the issue. The underwriter then would update the application, if necessary, when the information required for final CUSIP number assignment becomes available. Based on conversations with the CUSIP Service Bureau, the MSRB understands that this process generally would speed the assignment of final CUSIP numbers for a new issue even though maturity dates and tentative CUSIP number assignments in some cases may need to be changed after the initial application is filed.

For negotiated issues that are sold without a POS, the draft amendments would require that an application must be made no later than the time that the pricing information for the issue is determined. For competitive deals sold without a POS, the draft amendments would require a dealer acting as a financial advisor to make an application for CUSIP number assignment within one business day of dissemination of a notice of sale. The draft amendments also state a general requirement that the underwriter on a negotiated underwriting and a dealer acting as a financial advisor on a competitive deal ensure that final CUSIP number assignment occurs prior to the formal award of the new issue.[11]

Rule G-34 currently requires the underwriter in a competitive sale to apply for CUSIP numbers if an application has not already been made by the issuer or the issuer's representative. The MSRB understands that CUSIP numbers for competitively sold issues generally are assigned by the date of sale, but that on occasion this is not done.[12] Dealers have noted that, in these situations, automated trade processing and real-time trade reporting for the issue may be delayed because of the time necessary for the underwriter to obtain CUSIP numbers after the formal award. The draft amendments clarify the underwriter's existing responsibility in such situations to apply for CUSIP numbers immediately after receiving the award.

### **Underwriter Requirement to Provide Information to NIIDS within Certain Deadlines**

The draft amendments would require underwriters to transmit new issue information to NIIDS within deadlines that are intended to ensure that the information reaches information vendors and is further re-disseminated for use in automated trade processing systems by the time that trade executions begin in a new issue. The specific items of information required to be submitted are those generally considered necessary for automated trade processing in an issue and are designated in the NIIDS system as items necessary for "Trade Eligibility."

Underwriters would be required to submit this information electronically in accordance with the methods and formats stated for NIIDS system users. The information could be provided through computer-to-computer links or through a web interface allowing manual input of data. [13] Although the underwriter would be ultimately responsible for timely, comprehensive and accurate data submission, the draft amendments allow for use of an intermediary to accomplish this function.[14] DTCC has stated that it will not charge underwriters for accepting or re-disseminating NIIDS data.[15]

NIIDS is designed so that, once CUSIP numbers are assigned to a new issue, information about the issue can be submitted as it becomes available. The draft amendments to Rule G-34

would require underwriters to provide information specified by NIIDS as required for Trade Eligibility as soon as it is available, with a final deadline for all such information to be provided no later than two hours after the Time of Formal Award, which would be redefined as discussed below. The draft amendments to Rule G-34 also state that only the hours between 9:00 A.M. and 5:00 P.M. Eastern on an RTRS Business Day are counted for purposes of the time tables listed in the draft amendments. For example, if the Time of Formal Award occurs at 6:00 P.M. Eastern, the time tables listed in the draft amendments would not commence until 9:00 A.M. Eastern on the next RTRS Business Day.

#### **Revised Definition of "Time of Formal Award"**

The Time of Formal Award represents the earliest time that a dealer can execute transactions in a new issue and is used in Rule G-34 and in the draft amendments to set certain deadlines. The draft amendments to Rule G-34 propose a minor change to the current definition of "Time of Formal Award" for purposes of Rule G-34 timetables. The MSRB understands that underwriters are not always present at the time the issuer executes a bond purchase agreement or formally confirms an award of a competitive issue. Some time may elapse between this time and the time at which the underwriter becomes aware of the issuer's action and this delay may not be under the control of the underwriter. To address this issue, the draft amendments state that for purposes of Rule G-34, "Time of Formal Award" is defined as:

- for competitive issues, the *later* of the time the issuer formally awards the issue or the time the issuer notifies the underwriter of the award; and,
- for negotiated issues, the *later* of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution of the agreement.

The Time of Formal Award is one of the required information items to be submitted to NIIDS. It is therefore subject to the general requirement to be submitted as soon as it is available as well as the ultimate deadline for submission of all required data, which is two hours after the Time of Formal Award. These requirements should ensure that all information necessary for trade reporting and identification of CTC transactions is available through NIIDS no later than two hours after the Time of Formal Award.

#### **"Time of First Execution" and Advance Notification Requirement**

The second major component of the draft amendments to Rule G-34 is an advance notification requirement that would ensure that all dealers have advance notification of the underwriter's planned time for first trade executions and can be prepared to process trade executions by that time. Comments received on the April 2006 CTC indicator proposal stated that, under current industry practices, underwriters do not always disseminate the time that they intend to begin trade executions. Consequently, dealers that are not in the underwriting group sometimes do not know when their own transactions in the issue should begin and this may negatively affect the ability of those dealers to report their initial transactions in a timely and accurate manner or to coordinate their reported time of trade execution on inter-dealer transactions with members of the underwriting group.

To address this concern, the draft amendments would require the underwriter of a new issue to disseminate the "Time of First Execution," which is the underwriter's anticipated time for beginning trade executions in a new issue. Once an underwriter has completed the submission of all required information to NIIDS, the information then will need to be re-disseminated to other dealers that may have trades in the issue and these dealers (and service bureaus) will need to "set up" automated trade processing systems with the new issue information. To allow time for this process to occur, the underwriter would be required to provide a Time of First Execution that is at least two hours after the time that all required information is provided to NIIDS.

The draft amendments would accommodate several situations that may occur in the underwriting of new issues of municipal securities. For example, the underwriter would be allowed to submit an anticipated Time of Formal Award rather than wait for the actual Time of Formal Award if the underwriter and issuer have agreed in advance on a Time of Formal Award. This may be the case if the formal award is a scheduled pro forma requirement by an issuer's governing body and all details necessary for the formal award have been finalized and submitted to NIIDS in advance. The underwriters could in these cases complete its submissions to NIIDS using the anticipated Time of Formal Award. By doing this, the underwriter could schedule its Time of First Execution to occur immediately after the formal award, rather than waiting two

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hours. Any changes to these times would require correction in NIIDS as soon as known. As long as the two-hour notification period has been met once, however, it would not be necessary to start a new notification period as a result of minor adjustments to the Time of Formal Award or Time of First Execution.

**Request for Comment on Draft Amendments**

Comment is requested on all aspects of the proposed changes to Rule G-34. Consideration of the following questions may be helpful in providing comments:

- Underwriters on negotiated issues may begin entering information into NIIDS as soon as CUSIP numbers are assigned, while competitive underwriters will only begin to enter information after bids are opened. Should the two-hour period after the Time of Formal Award for completing the information submission to NIIDS be different for negotiated and competitive underwritings? Would the underwriter that is awarded a competitive deal for which CUSIP numbers have not been assigned be able to apply for and obtain CUSIP numbers and transmit information necessary for Trade Eligibility to NIIDS within two hours of the Time of Formal Award?
- The Time of Formal Award for a competitive issue is currently defined with reference to the issuer's "announcement" of the award. Questions may exist on when the "formal award" should be deemed to occur in certain circumstances, for example on such competitive underwritings in which the quantities of individual maturities must be determined after the lowest bid is accepted. Commentators are invited to provide comments on alternative formulations of Time of Formal Award to address special situations.
- Since electronically formatted information can be retransmitted immediately, the MSRB believes that the two-hour advance notification period prior to the Time of First Execution is sufficient for vendors and dealers and service bureaus to receive and enter information disseminated from NIIDS into their own systems. Is two hours a sufficient amount of time? Could the advance notice requirement be shortened? Would it be appropriate to provide different periods of advance notification for competitive and negotiated underwritings?
- Only the hours between 9:00 A.M and 5:00 P.M. Eastern Time on an RTRS Business Day are used for purposes of the time tables listed in the draft amendments. If an underwriter does not obtain and transmit all information necessary for Trade Eligibility to NIIDS by 3:00 P.M. Eastern Time, the underwriter would not be able to set a Time of First Execution until the following day. The MSRB is aware that this may affect West Coast underwriters more than those on the East Coast, but does not believe it would be possible to use "local time" in the rule given that dealers in different time zones trade with each other. The MSRB, however, requests comment on any suggestions for alternative approaches that would help address time zone issues.
- The draft amendments would apply to all types of new issues of municipal securities. Do certain types of new issues, such as issues that have long forward delivery periods or short-term instruments, have special characteristics or employ the use of different "bookrunning" services that would present difficulty for underwriters to comply with the draft amendments to Rule G-34?
- The schedule for implementing the proposed rule changes is dependent on the operational start date for NIIDS, which at this time is scheduled for August 2007. How much lead time would be necessary for underwriters to implement changes required to use the NIIDS system?

**CONDITIONAL TRADING COMMITMENT INDICATOR**

The MSRB is requesting additional comment on the proposed requirement for CTC transactions to be reported with a special condition indicator. The definition of "CTC transaction" and other technical requirements for the CTC indicator described in the April 2006 CTC indicator proposal have not been changed, but an end-of-day reporting deadline for CTC transactions has been added.[16] In addition, the draft amendments to Rule G-34 address operational concerns that were suggested by commentators on the April 2006 proposal.

**Comments Received on April 2006 Proposal**

Some of the comments on the April 2006 CTC indicator proposal focused on operational barriers to compliance, particularly the lack of timely access to information necessary for dealers to accurately identify CTC transactions in the initial trade reports made for a new issue. The provisions relating to "Time of Formal Award" contained in the draft amendments to Rule G-34 are intended to reduce these operational concerns by ensuring that underwriters disseminate a "Time of Formal Award" for each new issue as soon as possible and no later than two hours after

its occurrence. Other provisions in the draft amendments would re-define "Time of Formal Award" to accommodate situations in which an underwriter may not be informed of the formal award when it occurs.

Comments on the April 2006 CTC indicator proposal noted that the prices for CTC transactions are generally "stale" with respect to the reported time of trade execution. Several comments suggested, in light of the general operational difficulties in reporting new issue transactions within 15 minutes of execution and the marginal value of stale prices in real-time transaction reporting, that CTC transactions should be given an end-of-day reporting deadline.

Based on current transaction reporting procedures and market practices, the MSRB believes that these observations are accurate and therefore has included an end-of-day exception from the fifteen minute reporting requirement for all CTC transactions in the revised proposal.

The MSRB has not adopted the view suggested by some commentators that the trading commitments formed in response to firm orders between the Time of Formal Award and the Time of First Execution also should be subject to an end-of-day reporting deadline. The MSRB recognizes that the prices of these transactions also may be somewhat stale with respect to the reported time of execution, but notes that such prices generally will be much more current than those for CTC transactions. The draft amendments to Rule G-34 proposed in this notice seek to ensure that the new issue information necessary to execute, process and report transactions in new issues is provided to the market as quickly as possible as a means to minimize the time necessary for operational preparations between the Time of Formal Award and the Time of First Execution.

The MSRB also has considered comments that the CTC indicator is unnecessary, either because it is currently possible to identify CTC transactions in RTRS trade data or because all transaction prices reported on the initial day of trade executions should be considered stale. Although many CTC transactions represent primary market activity in the form of List Offering Price / Takedown transactions and already are subject to a special indicator requirement, the MSRB understands that a significant number of CTC transactions may represent secondary market pricing activity that has occurred prior to the Time of Formal Award. In such situations, it is likely that secondary market trading will also occur on the day that the initial trades in the issue are executed and these trade reports will contain valuable real-time price information.

Under existing trade reporting requirements, however, it is not possible to know if these secondary market prices are current market prices or are stale prices that were determined earlier in conditional trading commitments.

The MSRB continues to believe that, under existing market practices and trade reporting rules, it is necessary to adopt procedures allowing users of transparency information to identify the stale prices represented by CTC transactions and distinguish them from those that reflect current secondary market pricing activity.

#### **Request for Additional Comment on CTC Indicator**

Comment is requested on the revised CTC indicator requirement and provisions in the draft amendments of Rule G-34. Consideration of the following questions may be helpful in providing comments:

- Would the provisions in the draft amendments to Rule G-34 relating to "Time of Formal Award" be effective in allowing dealers to identify and report CTC transactions?
- Based on current market practices, what degree of "staleness" exists for transaction prices that are based on trading commitments formed between the Time of Formal Award and the Time of First Execution? Is there a need for a special indicator (not associated with an end-of-day reporting deadline) to identify these trades?
- The MSRB anticipates that the CTC indicator could be implemented by RTRS in January 2008 in conjunction with other changes such as the expiration of the three-hour exception, assuming that the draft amendments to Rule G-34 can be implemented by that time. What amount of lead time would be necessary for dealers to implement the CTC indicator?

#### **TRANSPARENCY OF NEW ISSUE TRANSACTION PRICES**

Although the CTC indicator would make it possible to identify trade reports with prices that may be significantly stale, it does not generally address the underlying market practices that

cause CTC transactions and stale prices. The MSRB is requesting comment on other measures that might improve the nature of price information provided with respect to new issue transactions.

### **Reasons for Conditional Trading Commitments**

Two basic factors contribute to the creation of CTC transactions. First, a transaction in a new issue generally cannot be finalized and executed until after the formal award of the issue. In part, this is because of a longstanding interpretation of MSRB rules to the effect that orders for a new issue may not be executed or confirmed until: (i) in competitive underwritings, the award by the issuer; and (ii) in negotiated underwritings, the execution of the bond purchase agreement. [17] This interpretation reflects a general understanding that, prior to these times, the terms and features of the securities and the nature of the commitment of the issuer to issue the securities have not been reduced to writing in a legally binding manner between the underwriter and issuer. Based on this understanding, this concept of a "formal award" has been incorporated into the definition of "Time of Formal Award" that currently exists in Rule G-34.[18]

The second factor that contributes to the practice of forming conditional trading commitments is that, particularly in the case of negotiated underwritings, the terms, features and offering prices of a new issue often are concluded between an underwriter and issuer in an "informal" or "oral" award well in advance of the time that a formal award can be made. In these cases, the timing of the informal award is influenced by market factors relating to the pricing of issue. The delays in completing the bond purchase agreement may occur for several reasons, such as the time needed to reduce the oral agreement to writing, the time needed obtain execution of the document by the appropriate issuer personnel, or the need to obtain an official action from the issuer's governing body. An additional consideration, primarily affecting advanced refunding issues, is that the quantity of securities to be issued in specific maturities of the issue may need to be adjusted or finalized after the informal award. This consideration is also relevant in explaining why trading commitments made prior to the formal award are conditional in nature.

### **Other Approaches to Addressing Transparency of New Issue Prices**

As discussed above, the delay in obtaining the formal award for a new issue may extend for as long as two days. During this time, market participants, including those that are not in the underwriting group and subject to offering price agreements, are aware of the terms of the oral award and sometimes effectively begin to "trade" the issue by forming conditional trading commitments. In these cases, the pricing activity represented by the conditional trading commitments is not made available in real-time and will be stale when it is ultimately reported.

A primary objective of RTRS is to allow market participants to monitor market price levels on a real-time basis. The MSRB has stated that the information disseminated in price transparency products is one of the factors dealers should use in pricing transactions in municipal securities. [19] One approach to address transparency issues associated with CTC transactions is to require conditional trading commitments to be reported to RTRS as they are formed rather than waiting for trade execution. This would represent a substantial change in current transaction reporting procedures used by dealers and would present a number of operational issues.[20] The impact of such a change, however, could be minimized to some extent if the requirement were limited to CTCs that are not list offering price or takedown transactions.

Another possible approach to CTC transactions might be to reduce existing delays between the informal and formal awards. In effect, this would reduce the chance of the secondary market pricing activity that occurs without being reported in real-time. As a possible example, the MSRB could consider rules that provide for a maximum length of time (e.g., 24 hours) between the formation of an informal agreement with an issuer on pricing and the expected time of formal award. While this would reduce the flexibility that currently exists to time new issue pricing independently of the formal award, it would help reduce the potential for secondary market activity prior to the formal award and thus reduce the number of stale prices that are of the most concern.

Comment is requested on the approaches suggested above and on any other measures that could be taken to address stale prices and improve the transparency of new issue transaction pricing.

Questions about this notice may be directed to Justin R. Pica, Uniform Practice Policy Advisor.

March 5, 2007

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**Rule G-14: Reports of Sales or Purchases\***

(a) through (b) No change.

**Rule G-14 RTRS Procedures**

(a) General Procedures.

(i) No change.

(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) through (C) No change.

(D) A dealer effecting a transaction that is the result of a "Conditional Trading Commitment" as described in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions shall report such trades by the end of the day on which the trade is executed.

(iii) through (vi) No change.

(b) through (d) No change.

**Rule G-34: CUSIP Numbers and New Issue Requirements**

(a) New Issue Securities.

(i) Assignment of CUSIP Numbers.

(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter") and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue ("financial advisor") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue, as follows:

~~(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue. The underwriter shall make such application as promptly as possible, but in no event later than, in the case of negotiated sales, a time sufficient to ensure assignment of a CUSIP number or numbers prior to the time the contract to purchase the securities from the issuer is executed; or, in the case of competitive sales, the time of the first execution of a transaction in the new issue by the underwriter. A broker, dealer or municipal securities dealer acting as a financial advisor to an issuer in connection with a competitive sale of an issue shall ensure that application for a CUSIP number or numbers is made in sufficient time to permit assignment of CUSIP numbers prior to the time of award. In making an application for CUSIP number assignment, the following information shall be provided:~~

(1) The underwriter in a negotiated sale shall make an application by no later than one business day after the

dissemination of any Preliminary Official Statement (POS) for the issue, and, if no POS is disseminated, shall make such application by no later than the time that pricing information for the issue is finalized. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(2) The underwriter in a competitive sale for which no CUSIP numbers have been pre-assigned shall make an application immediately after receiving notification of the award from the issuer. The underwriter in a competitive sale shall ensure that CUSIP numbers are assigned prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

(3) A financial advisor shall make an application by no later than one business day after the dissemination of any POS for the issue, and, if no POS is disseminated, shall make such application by no later than one business day after dissemination of a notice of sale. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(4) In making applications for CUSIP number assignment, the following information shall be provided:

(a) ~~(1)~~ through (h) ~~(9)~~ No change.

(5) Any changes to information identified in this paragraph (a)(i)(A) and included in an application for CUSIP number assignment shall be provided to the Board or its designee as soon as they are known but no later than a time sufficient to ensure final CUSIP number assignment occurs prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

(B) through (D) No Change.

(ii) Application for Depository Eligibility, CUSIP Number Affixture and Initial Communications. Each underwriter shall carry out the following functions:

(A) through (B) No change.

(C) The underwriter shall communicate information about the new issue in accordance with the requirements of this paragraph (a)(ii)(C) to ensure that other brokers, dealers and municipal securities dealers have timely access to information necessary to report, compare, confirm, and settle transactions in the new issue and to ensure that registered securities clearing agencies receive information necessary to provide comparison, clearance and depository services for the new issue.

~~(E) The underwriter shall as promptly as possible announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.~~

(1) The underwriter shall ensure that the following information is submitted to a new issue information dissemination system in the manner described in the written procedures for system users and that changes to submitted information are made as soon as possible:

~~(1) the CUSIP number or numbers assigned to the issue and descriptive information sufficient to identify the CUSIP number corresponding to each part of the issue assigned a specific CUSIP number; and~~

(a) the Time of Formal Award. For purposes of this paragraph (a)(ii)(C), the "Time of Formal Award" means, for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award.

(b) the Time of First Execution. For purposes of this paragraph (a)(ii)(C), the "Time of First Execution" means the time the underwriter plans to execute its first transactions in the new issue. The underwriter shall designate a Time of First Execution that is no less than two hours after all information required by paragraph (a)(ii)(C) has been transmitted to the new issue information dissemination system.

(c) All other information identified as required for "Trade Eligibility" in the new issue information dissemination system.

(2) The underwriter shall ensure that all information identified in this paragraph (a)(ii)(C) is provided no later than two hours of the Time of Formal Award. For purposes of this paragraph (a)(ii)(C), the hours counted in determining the responsibilities of an underwriter shall include only the hours of 9:00 A.M. and 5:00 P.M. Eastern Time on an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii).

~~(2) the time of formal award. For purposes of this subparagraph (a)(ii)(C), time of formal award shall mean, for competitive issues, the time the issuer announces the award; and, for negotiated issues, the time the contract to purchase the securities from the issuer is executed.~~

(3) The term "new issue information dissemination system" means an automated, electronic system operated by a securities clearing agency registered with the Securities and Exchange Commission providing depository services for municipal securities that receives comprehensive new issue information on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating such information to information vendors supplying formatted municipal securities information for use in automated trade processing systems.

(D) No change.

(iii) No change.

(b) No change.

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[1] See "Amendments Approved to Rule G-14 RTRS Procedures Relating to "List Offering Price" and "Takedown" Transactions," MSRB Notice 2006-28 (October 19, 2006).

[2] Rule G-14 transaction reporting procedures provide an end-of-day reporting exception for certain short-term securities. A temporary three-hour reporting deadline for certain when-issued transactions also is available but will sunset at the end of 2007. This is discussed *infra* in footnote 4.

[3] The 15-minute reporting deadline also applies to certain primary market transactions that do not meet the definitions of "List Offering Price" or "RTRS Takedown" transactions, including transactions in securities in "Not Re-Offered" maturities within an issue.

[4] The temporary exception initially was available for trades in which the dealer: (i) did not have the CUSIP number and indicative data of the issue traded in the securities master file used by the dealer to process trades for confirmation, clearance and settlement; (ii) had not traded the security in the previous year; and (iii) did not act as a syndicate manager or syndicate member for the security. It has subsequently been amended to apply only to when-issued transactions and will completely sunset at the end of 2007.

[5] TBMA has since merged with the Securities Industry Association and is now the Securities Industry and Financial Markets Association ("SIFMA").

[6] See "Notice of Filing of Proposed Rule Change Relating to RTRS Procedures, Under Rule G-14 Reports of Sales or Purchases," MSRB Notice 2006-60 (December 13, 2005). The proposed rule change was approved by the Securities and Exchange Commission on December 16, 2005. See footnote 4 for a description of the exception.

[7] See Letter to Jonathan G. Katz, Secretary, Commission, from Leslie M. Norwood, Vice President and Assistant General Counsel, The Bond Market Association (July 20, 2004).

[8] See "Industry Preparations for Expiration of Three Hour Exception from Real-Time Transaction Reporting," MSRB Notice 2006-12 (April 24, 2006). This notice contains an internet link to information about NIIDS located at DTCC's web site.

[9] RTRS only requires dealers to include limited information on trade reports in when-issued securities, such as the CUSIP number of the security traded, the par value of the transaction, and the transaction price expressed as either yield or dollar price.

[10] Rule G-34 defines "underwriter" very broadly to include a dealer acting as a placement agent as well as any dealer purchasing new issue securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the "underwriter" for purposes of Rule G-34.

[11] Under existing provisions of Rule G-34, dealers frequently apply for CUSIP numbers before interest rates are determined. In these cases, the dealer must provide the final interest rate information as soon as it becomes available. The draft amendments would clarify that a dealer must update any of the required information that changes after an initial application as soon as the new information becomes available.

[12] As noted above, in competitive sales where a dealer serves as financial advisor, Rule G-34 requires the dealer to apply for CUSIP numbers. However, in competitive sales where there is no dealer financial advisor, there is no other dealer associated with the issue prior to the date of sale that can be charged with the responsibility to make a pre-sale application for CUSIP numbers.

[13] DTCC's web site includes information on the procedures for submitting information to NIIDS and technical specifications for data submission at:  
<http://www.dtcc.com/reengineering/underwriting/specs.html>

[14] Several industry vendors that provide "bookrunning" services to underwriters on new issues have indicated that they plan to offer a service to transmit information about a new issue to NIIDS on behalf of the underwriter.

[15] DTCC also has stated that information vendors receiving the data will be charged only for

communications costs.

[16] The draft revisions to *Specifications for Real-Time Reporting of Municipal Securities Transactions* (click here to access the draft Specifications) show the values that would be used in the special condition indicator field to indicate a CTC transaction. All dealers, including those outside the underwriting group, would be required to use the CTC indicator. For inter-dealer transactions, the dealer on the sell side of the transaction would be responsible for using the indicator.

[17] See "Confirmation: Mailing of WAII Confirmation," MSRB Rule G-12 Interpretive Letter (April 30, 1982), paragraph 3556.55 MSRB Manual.

[18] MSRB Rule G-34 (a)(ii)(C)(2).

[19] See "Review of Dealer Pricing Responsibilities," MSRB Notice 2004-3 (January 26, 2004).

[20] While complete securities information necessary for a report of a trade execution likely would not be available at the time a CTC report is made, the MSRB could propose that limited information, including the time the CTC was formed, the price, and the CUSIP number, be provided to RTRS. At a minimum, the MSRB's internet portal for reporting transactions, RTRS Web, could be used to manually report CTCs, thus minimizing the amount of dealer system changes needed to advance the timing of reporting CTCs. Once the formal award takes place, dealers would provide the MSRB with details of trade executions, as is currently required, and identify whether any reported CTCs were not executed to ensure that surveillance data is correct.

\* Underlining indicates additions; strikethroughs indicate deletions.

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**Alphabetical List of Comment Letters on MSRB Notice 2007-10 (March 5, 2007)**

1. Bear, Stearns & Co. Inc.: Letter to Justin Pica, MSRB, from Daniel L. Keating, Senior Managing Director (May 9, 2007)
2. CUSIP Service Bureau, Standard & Poor's: Letter to Justin Pica, MSRB, from Gerard Faulkner, Director of Operations (May 1, 2007)
3. First Southwest Company: Letter to Justin Pica, MSRB, from Richard A. DeLong, Managing Director, Municipal Underwriting and Trading (May 3, 2007)
4. J.J.B. Hilliard, W.L. Lyons, Inc.: Letter to Ernesto Lanza, MSRB, from Lu Ann Vargo, Senior Vice President, Municipal Trader/Underwriter (April 4, 2007)
5. Joe Jolly & Co., Inc.: Fax to Justin Pica, MSRB, from Joe Jolly, Jr. (May 3, 2007)
6. Lehman Brothers: Email to Justin Pica, MSRB, from Richard Sentochnik, Senior Vice President, Municipal Bond Department (May 3, 2007)
7. Roosevelt & Cross, Inc.: Letter to Justin Pica, MSRB, from Raymond O'Sullivan, Executive Vice President (April 30, 2007)
8. Securities Industry and Financial Markets Association: Letter to Justin Pica, MSRB, from Leslie M. Norwood, Vice President and Assistant General Counsel (May 9, 2007)
9. Wiley Bros.: Fax to Justin Pica, MSRB (May 3, 2007)

**BEAR  
STEARNS**

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May 9, 2007

Justin R. Pica  
Uniform Practice Policy Advisor  
Municipal Securities Rulemaking Board  
1900 Duke Street  
Suite 600  
Alexandria, VA 22314

Re: MSRB Notice 2007-10: Draft Rule Changes to MSRB Rule G-14 and to  
MSRB Rule G-34

Bear, Stearns & Co. Inc. ("Bear Stearns") appreciates this opportunity to respond to the March 5, 2007 notice ("Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") in which the MSRB is requesting comments on the draft rule changes to MSRB Rule G-14 and MSRB Rule G-34. The Notice describes the possible implementation of "a special indicator on price reporting of new issue transactions that are based on priced trading commitments made prior to the time of award" and a requirement that underwriters follow "certain procedures for disseminating information for trade reporting of new issues".

At this time, Bear Stearns would like to acknowledge that it participated in the letter submitted by The Securities Industry and Financial Markets Association, dated May 9, 2007, and fully supports that letter.

Regards,

  
Daniel L. Feating  
Senior Managing Director

The McGraw-Hill Companies

# STANDARD & POOR'S

**CUSIP** Service Bureau, 55 Water Street, 45<sup>th</sup> Floor, New York, NY 10041

May 1, 2007

Mr. Justin R. Pica  
Uniform Practice Policy Advisor  
Municipal Securities Rulemaking Board  
1900 Duke Street Suite 600  
Alexandria, VA 22314

Re: Comment Letter on MSRB Notice 2007-10, Proposed Rule Changes to Improve  
Transaction Reporting of New Issue Municipal Securities (Rule G-34)

Dear Mr. Pica,

The CUSIP Service Bureau ("CSB") welcomes the opportunity to comment on the draft amendments to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements. As the CSB is often one of the first recipients of new issue information, we recognize the importance of the CUSIP assignment within the overall new issue process.

To that end, the CSB has always encouraged industry participants to apply for CUSIP numbers as early as possible when bringing securities to market. The CSB therefore supports the proposed G-34 rule change for underwriters to submit CUSIP applications within one business day after the dissemination of the Preliminary Official Statement ("POS"). Also, the CSB recommends that G-34 be amended to require underwriters to send the final Official Statement to the CSB after sale in addition to the documentation for CUSIP applications currently required in subparagraph (a)(i)(B) of the rule.

The CSB supports the proposed G-34 change to accelerate the time when underwriters must apply for CUSIP numbers from around the time of pricing to when the POS is available, which is much earlier in the new issue process. Under current G-34 guidelines for negotiated sales requiring underwriters to apply to the CSB so that CUSIP numbers are assigned prior to the time the bond purchase agreement is signed, underwriters will frequently wait until pricing when the maturity schedule has been finalized and no longer subject to change before applying for CUSIP numbers. However, CUSIP numbers can be assigned well before pricing if a POS is available with the maturity schedule. Also, any maturity date changes before final pricing are updated in the CUSIP service and transmitted to underwriters soon after the CSB is notified.

Even though the CSB provides Express Service in which CUSIP numbers are assigned within one hour, the proposed G-34 change for underwriters to apply to the CSB soon after the POS is disseminated would facilitate the timely availability of new CUSIP numbers to the municipal securities industry. Continuing with the current requirement for underwriters to apply for CUSIP numbers just prior to the signing of the bond purchase agreement leaves a very short time frame to assign CUSIP numbers by the time of formal award, which is required for NIIDS to start the dissemination of new issue information.

For competitive deals, the CSB similarly supports the proposed G-34 change for underwriters to apply for CUSIP numbers within one business day after the dissemination of the POS or Notice of Sale. Underwriters may apply for CUSIP numbers on competitive deals before the sale date without being charged and the CUSIP assignment fee will be charged to the winning bidder on the sale date. Most competitive deals are assigned CUSIP numbers before the sale date and before the underwriter applies or may be aware that CUSIP numbers have been assigned.

Furthermore, the CSB recommends that Rule G-34 include a new subparagraph following subparagraph (a)(i)(B) that the underwriter who applied for CUSIP numbers be required to follow-up with the final terms of an offering after the sale by sending the final Official Statement to the CSB within one business day after the Official Statement is disseminated. Submission of the final Official Statement would be the final step in the CUSIP assignment process and separate from the initial CUSIP application pursuant to subparagraphs (a)(i)(A) and (a)(i)(B). The CSB requires the final Official Statement as the primary source to finalize securities information on the CUSIP service.

The CSB appreciates the MSRB's consideration of our comments on the proposed Rule G-34 changes to facilitate continued timely CUSIP number assignment and dissemination to the municipal securities industry.

Sincerely,

Gerard Faulkner  
Director of Operations, CUSIP Service Bureau  
Standard & Poor's  
Phone: 212-438-6542  
E-mail: [gerard\\_faulkner@standardandpoors.com](mailto:gerard_faulkner@standardandpoors.com)

cc: Mary Beth McCrory, Chairperson, CUSIP Board of Trustees  
Diane Poole, Group Director, American Bankers Association

 **CUSIP** Committee on Uniform Security Identification Procedures  
A registered trademark of the AMERICAN BANKERS ASSOCIATION

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**Richard A. DeLong**  
Managing Director  
Municipal Underwriting & Trading

rdelong@firstsw.com

***Via facsimile and Federal Express***

May 3, 2007

Municipal Securities Rulemaking Board  
Mr. Justin Pica  
Uniform Practice Policy Advisor  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

Dear Mr. Pica and Members of the Board,

First Southwest Company (FSC) appreciates the opportunity to respond and respectfully submits the following responses to the MSRB's Notice 2007-10 (March 5, 2007) requesting comments on proposed rule changes to improve trade reporting and price transparency of transactions effected in new issues of municipal securities. For your convenience, please see Attachment A, which sets forth the proposed timeline of events for a municipal new issue.

**Proposed Amendments to Rule G-34**

**CUSIP Application**

***The proposed draft amendment to MSRB Rule G-34 would require the underwriter in a negotiated sale and a dealer acting as financial advisor on a competitive sale to make an initial application for CUSIP number assignment within one business day of the dissemination of any Preliminary Official Statement (POS) for the issue.***

FSC agrees with the MSRB that CUSIP numbers be assigned as early as possible in the underwriting process. However, if the underwriter is not disseminating the POS, it would be difficult for the underwriter to comply with the amendment as proposed. The CUSIP Service Bureau issues in excess of 160,000 CUSIP numbers per year for municipal issuers versus approximately 24,100 for the corporate equity and debt markets. The maturity schedule is not always included in a municipal POS. The underwriter does not finalize the maturity schedule and other features prior to the period between the informal and formal award. This means no CUSIP number can be issued until these features are developed. Consideration should be given to refunding competitive issues, in which case, though the formal award has been made, the final maturity structure may not be completed for several hours.

Also, some thought should be given to the treatment of negotiated underwritings that are awarded when certain parameters, such as net present value savings, have been achieved. In the case of these "parameter sales", the formal award is simultaneous with the final pricing and structuring, making an application for CUSIP number assignment prior to the formal award impossible. Therefore, FSC supports the current requirement of applying for CUSIP numbers as sufficient time to disseminate the necessary and accurate information to NIIDS within the proposed two hour deadline.

***The draft amendments to Rule G-34 would require underwriters to provide information specified by NIIDS as required for Trade Eligibility as soon as it is available, with a final deadline for all such information to be provided no later than two hours after the Time of Formal Award, which would be redefined as discussed below.***

FSC supports the submission of certain new issue information to NIIDS within the two hour time frame proposed by the MSRB, including the proposed revision to the definition of Time of Formal Award.

***Draft amendment to Rule G-34 is an advance notification requirement that would ensure that all dealers have advance notification of the underwriter's planned time for first trade executions and can be prepared to process trade executions by that time.***

FSC supports the MSRB's concept of Time of First Execution and that the underwriter's Time of First Execution must be at least two hours after submission to NIIDS. However, FSC believes it is important that this timeframe be reviewed as the industry gains experience with the NIIDS submission process. FSC also supports a practice that would allow for all price reporting to begin at the Time of First Execution, as set by the underwriter, as a means to provide structure to the first day of trading, as well as, give dealers time to retrieve the necessary data from NIIDS.

***The schedule for implementing the proposed rule changes is dependent on the operational start date for NIIDS, which at this time is scheduled for August 2007. How much lead time would be necessary for underwriters to implement changes required to use the NIIDS system?***

FSC recommends that the NIIDS system be fully tested and operational before dealers are required to comply with the proposed amendments to Rule G-34. System changes usually require six months lead time in order for all dealers to comply.

### **Conditional Trading Commitment (CTC)**

***Would the provisions in the draft amendments to Rule G-34 relating to Time of Formal Award be effective in allowing dealers to identify and report CTC transactions?***

FSC supports the efforts of the MSRB to further improve price transparency by utilizing a CTC indicator to aid in identifying "stale" transactions being reported on the first day of trading. As defined by the MSRB, a CTC is "any transaction that is based upon a priced trading commitment made prior to the 'Time of Formal Award' for a new issue." FSC would support a rule that requires the use of a CTC indicator on all transactions based upon a priced trading commitment made prior to the Time of Formal Award (revised definition). However, in order for the investing public to derive value from the CTC indicator, it must be displayed along with the pricing information. Currently, this is not the case with other indicators, such as LOP.

***Based on the current market practices, what degree of "staleness" exists for transaction prices that are based on trading commitments formed between the Time of Formal Award and the Time of First Execution? Is there a need for a special indicator (not associated with an end-of-day reporting deadline) to identify these trades?***

FSC recognizes that there is value in transactions that occur after the Time of Formal Award but prior to the Time of First Execution. However, FSC questions the volume of trades that are occurring during this timeframe, and whether capturing such trade information merits the use of another indicator. Therefore, FSC does not believe an additional indicator for these transactions is necessary. The absence of an indicator identifies them as current market transactions.

***The MSRB anticipates that the CTC indicator could be implemented by RTRS in January 2008 in conjunction with other changes such as the expiration of the three-hour exception, assuming that the draft amendments to Rule G-34 can be implemented by that time. What amount of lead time would be necessary for dealers to implement the CTC indicator?***

FSC believes that the amount of lead time needed in order that all market participants can comply with the proposed amendments to Rule G-34 and G-14 is approximately six months. Most trading systems will require programming changes and testing in order to comply with the new requirements of Rules G-34 and G-14. The marketplace demands automated electronic trading systems to accomplish real-time price transparency. Most participants have spent a significant amount of time and effort to meet these goals. The marketplace has benefited from these efforts, but the results of such efforts were not realized through increased manual processes.

***Another possible approach to CTC transactions might be to reduce existing delays between the informal and formal awards. In effect, this would reduce the chance of the secondary market pricing activity that occurs without being reported in real-time. As a possible example, the MSRB could consider rules that provide for a maximum length of time (e.g., 24 hours) between the formation of an informal agreement with an issuer on pricing and the expected Time of Formal Award. While this would reduce the flexibility that currently exists to time new issue pricing independently of the formal award, it would help reduce the potential for secondary market activity prior to the formal award and thus reduce the number of stale prices that are of the most concern.***

While the reduction of the time between informal and formal awards would have the desired effect of limiting the number of "stale" transactions being reported to RTRS, it would, as the MSRB recognizes, reduce issuers' flexibility to price their bond sales in response to changing market conditions. This flexibility is extremely important to all potential issuers. As an example, during the past year (April 27, 2006 through April 26, 2007) the Bond Buyer 20-Bond GO Index moved 5 or more basis points 21 times on a week-to-week basis. The ability to react to these moves in the market and not be restricted to a twenty four hour window can be significant in terms of savings realized by the issuer. In effect, taxpayers would be subsidizing improved efficiency for price reporting that would benefit investors at a direct cost to a taxpayer or user of a municipal service. FSC does not believe that the incremental value of reducing "stale" price reporting is sufficient to justify the potential additional interest costs to issuers.

***[20] While complete securities information necessary for a report of a trade execution likely would not be available at the time a CTC report is made, the MSRB could propose that limited information, including the time the CTC was formed, the price, and the CUSIP number, be provided to RTRS. At a minimum, the MSRB's internet portal for reporting transactions, RTRS Web, could be used to manually report CTCs, thus minimizing the amount of dealer system changes needed to advance the timing of reporting CTCs. Once the formal award takes place, dealers would provide the MSRB with details of trade executions, as is currently required, and identify whether any reported CTCs were not executed to insure that surveillance data is correct.***

It is FSC's understanding that RTRS is a trade execution reporting system and not an order reporting system. How would reporting orders manually advance or enhance the trade reporting process? Any concept that utilizes manual submission as a means of accomplishing fifteen minute trade reporting seems counterintuitive to the goals of fifteen minute trade reporting. Therefore, FSC does not agree with the suggestion requiring transactions be price reported prior to Time of First Execution would significantly improve price transparency, as well as, reduce the amount of dealer systems changes needed to advance the timing of reporting CTCs.

***Comment is requested from market participants on all aspects of the proposed rule changes, including other measures that could improve the timeliness and quality of price transparency information for new issues.***

As a means to improve price transparency, FSC suggests an amendment to Rule G-14 that would require all trades made on the first day of trading after the Time of Formal Award have no indicators, even EOD-LOP/TD transactions that are currently required to have the EOD-LOP/TD indicator. FSC believes this new practice would enhance price transparency in the current market, although such information would be somewhat "stale". The MSRB has acknowledged that some "staleness" exists from the limited number of trades made on the first day of trading between Time of Formal Award and Time of First Execution. Trades made out of the syndicate after the Time of Formal Award are, in fact, at the current market price because usually syndicate trade restrictions have been removed. Eliminating any special condition indicators would end confusion about whether the price being reported reflects the current market.

In summary, there would be four types of transactions at the Time of First Execution by the underwriter:

1. EOD-LOP/TD
2. CTC
3. Both EOD-LOP/TD and CTC
4. No indicator, current market price transactions

Transactions 1-3 would have a reporting deadline by the end of the day, transaction 4 would have a reporting deadline of fifteen minutes.

FSC appreciates the MSRB's consideration of its comments. Please feel free contact me for further discussion or clarification of these comments.

Sincerely,

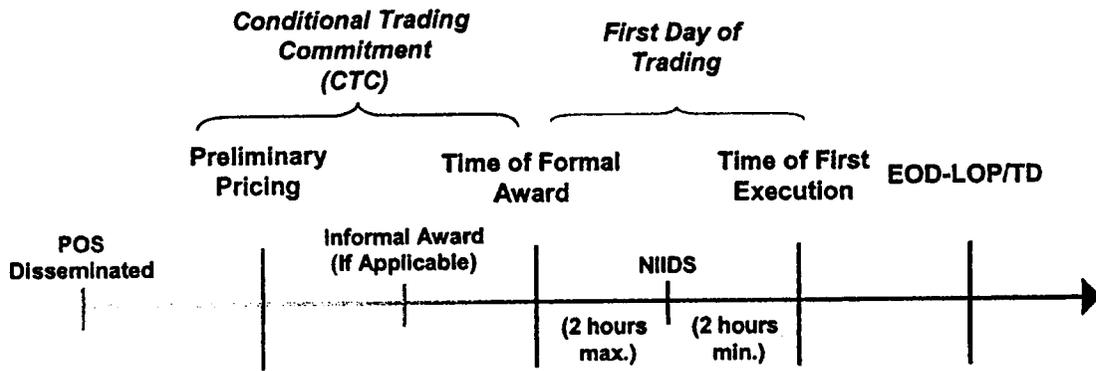


Richard A. Delong  
Managing Director  
Municipal Underwriting and Trading

Attachment

## Attachment A

### MUNICIPAL NEW ISSUE Proposed Timing of Events



**J.J.B. HILLIARD, W.L. LYONS, INC.**  
Member New York Stock Exchange, Inc.

502-588-8400

Hilliard Lyons Center  
P.O. Box 32760  
Louisville, KY 40232-2760  
Established 1854

April 4, 2007

Ernesto A. Lanza, Esq.  
Senior Associate General Counsel  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, Virginia 22314

Re: Comments on MSRB 2007-10

Dear Mr. Lanza:

This letter is in response to the Board's request for comments on proposed rule changes to improve transaction reporting of new issue municipal securities.

The **centralization** of an electronic system for new issue trade processing is a change that the industry has been eager for implementation. One of the biggest problems in the municipal industry is the amount of paperwork that is associated with a new issue underwriting and getting this paperwork completed and disseminated on a timely manner. This proposal would alleviate the duplication of information that is sent to numerous vendors and would cut down on the time needed to process new issues.

Complying with the proposal to use the New Issue Information Dissemination System (NIIDS) should not be a hardship to implement and will make the dissemination of the information more uniform. Another important benefit would be the ability to efficiently control information. We have had instances where one vendor received incorrect information from an outside source. With one central location for information, the underwriter can control what information would be released to the public and alleviate any miscommunication.

In the past, some CUSIP numbers have not been requested prior to the "final award" because the structure of the issue may change. If CUSIP numbers are requested for each maturity and then the issue is structured with a term(s), the underwriter is still responsible for the cost of all CUSIP'S that were requested, not just the one that was used. This is a cost that the underwriter either absorbs or is passed on to the issuer. We have no problem

in requesting CUSIP'S earlier for a new issue; however, it may result in higher cost for the issuer or underwriter.

Thank you for allowing me to provide comments to the Board regarding this proposal.

Sincerely,

A handwritten signature in black ink that reads "Lu Ann Vargo". The signature is written in a cursive, flowing style.

Lu Ann Vargo  
Senior Vice President  
Municipal Trader/Underwriter



JOE JOLLY & CO., INC. 1000 PICA BLVD  
P. O. Box 8 ♦ Birmingham, AL 35201-0008  
(205) 252-2105 ♦ (800) 826-1378 ♦ Fax (205) 251-3448

## MEMORANDUM

TO: Justin Pica  
FROM: Joe Jolly, Jr.  
DATE: May 3, 2007  
SUBJECT: MSRB Notice 2007-10 - CTC's

---

We are a muni only dealer serving Alabama municipalities and counties as investment banker. Most of our transactions are negotiated issues, less than \$20,000,000, that are sold to the local Alabama market; there is very little, if any, "trading" in these issues prior to formal (signed) award.

We have a real concern about this proposal; quite frankly, it is difficult to understand what is proposed and why it is needed. The municipal market, in my opinion, is very efficient and works well - why complicate things!

There may be valid reasons for the proposed rule as applied to large new issues where pre-award trading may occur. Perhaps the proposal can be modified to exclude issues of, say, less than \$20,000,000. Otherwise, in my opinion, this proposal will add unnecessarily to the smaller dealer's burden and not benefit investors at all.

**Justin Pica**

---

**From:** Sentochnik, Richard [richs@lehman.com]  
**Sent:** Thursday, May 03, 2007 3:30 PM  
**To:** Justin Pica  
**Cc:** Papantonio, Edmond; Laufer, Richard A; Milano, Steven M  
**Subject:** Lehman's Response to MSRB Notice 2007-10

**Attachments:** Lehman response to MSRB - Transaction reporting.doc



Lehman response  
to MSRB - Tran...

<<Lehman response to MSRB - Transaction reporting.doc>>

Richard Sentochnik SVP  
Pica  
Lehman Brothers  
Municipal Bond Dept.  
Practice Policy Advisor  
New York, NY. 11702.  
Alexandria, Va.  
Phone: 212-528-1061

Justin R.  
MSRB  
Uniform

Justin,

Attached above is Lehman's response to MSRB Notice 2007-10 (March 5, 2007) request for comments.

Please feel free to contact me if you have any questions.

Richard Sentochnik

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Please be advised that any discussion of U.S. tax matters contained within this communication (including any attachments) is not intended or written to be used and cannot be used for the purpose of (i) avoiding U.S. tax related penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

## **MSRB Request for Comments and responses**

### **1) MSRB request for Comment:**

*Underwriters on negotiated issues may begin entering information into NIIDS as soon as CUSIP numbers are assigned, while competitive underwriters will only begin to enter information after bids are opened. Should the two-hour period after the Time of Formal Award for completing the information submission to NIIDS be different for negotiated and competitive underwritings? Would the underwriter that is awarded a competitive deal for which CUSIP numbers have not been assigned be able to apply for and obtain CUSIP numbers and transmit information necessary for Trade Eligibility to NIIDS within two hours of the Time of Formal Award?*

### **Lehman Comment:**

**Negotiated Issues:** Underwriters almost always have cusips before the time of formal award on negotiated issues. I believe in most cases all information could be transmitted to NIIDS by two hours after the time of formal award.

**Competitive Issues:** Underwriters often don't have cusips at the time of formal award and issuers often award an issue immediately and then reconvene to resize/restructure. In addition, some issuers selling competitively don't retain professional financial services. Communication with these issuers is often inefficient as contacts have to be located. We would support a longer period, perhaps three hours, for competitive issues.

### **2) MSRB request for Comment:**

*The Time of Formal Award for a competitive issue is currently defined with reference to the issuer's "announcement" of the award. Questions may exist on when the "formal award" should be deemed to occur in certain circumstances, for example on such competitive underwritings in which the quantities of individual maturities must be determined after the lowest bid is accepted. Commentators are invited to provide comments on alternative formulations of Time of Formal Award to address special situations.*

### **Lehman Comment**

We support an alternative formal award definition which would be the later of the award or the final restructuring/resizing of the issue.

### **3) MSRB request for Comment:**

*Since electronically formatted information can be retransmitted immediately, the MSRB believes that the two-hour advance notification period prior to the Time of First Execution is sufficient for vendors and dealers and service bureaus to receive and enter information disseminated from NIIDS into their own systems. Is two hours a sufficient amount of time? Could the advance notice requirement be shortened? Would it be appropriate to provide different periods of advance notification for competitive and negotiated underwritings?*

### **Lehman Comment**

While we believe that two hours is probably sufficient, we believe that this decision can best be made after seeing an operational version of NIIDS. (see answer to comment # 9 below).

**4) MSRB request for Comment:**

*Only the hours between 9:00 A.M and 5:00 P.M. Eastern Time on an RTRS Business Day are used for purposes of the time tables listed in the draft amendments. If an underwriter does not obtain and transmit all information necessary for Trade Eligibility to NIIDS by 3:00 P.M. Eastern Time, the underwriter would not be able to set a Time of First Execution until the following day. The MSRB is aware that this may affect West Coast underwriters more than those on the East Coast, but does not believe it would be possible to use "local time" in the rule given that dealers in different time zones trade with each other. The MSRB, however, requests comment on any suggestions for alternative approaches that would help address time zone issues.*

**Lehman Comment**

We agree and only add that a provision should be included for "early closes".

**5) MSRB request for Comment:**

*The draft amendments would apply to all types of new issues of municipal securities. Do certain types of new issues, such as issues that have long forward delivery periods or short-term instruments, have special characteristics or employ the use of different "book running" services that would present difficulty for underwriters to comply with the draft amendments to Rule G-34?*

**Lehman Comment:**

We believe that certain products which don't currently use a book running service would find it difficult to comply with the two hour requirement. We believe it would be appropriate to phase in other products over time.

**6) MSRB request for Comment:**

*The schedule for implementing the proposed rule changes is dependent on the operational start date for NIIDS, which at this time is scheduled for August 2007. How much lead time would be necessary for underwriters to implement changes required to use the NIIDS system?*

**Lehman Comment:**

We believe that until the final requirements of NIIDs are determined, it would be impossible to commit to a time frame. However, as this is a major change in the way of doing business, a long lead time would be warranted.

**7) MSRB Request for Additional Comment on CTC Indicator**

*Comment is requested on the revised CTC indicator requirement and provisions in the draft amendments of Rule G-34. Consideration of the following questions may be helpful in providing comments:*

*Would the provisions in the draft amendments to Rule G-34 relating to "Time of Formal Award" be effective in allowing dealers to identify and report CTC transactions?*

**Lehman Comment:**

As written, the draft amendment of Rule G-34 makes identifying CTC transactions somewhat confusing. There seems to be three interpretations within the industry. The first is that CTC's

are any trades done before the time of formal award regardless of price or whether the parties to the trade are members of the syndicate. Another is that syndicate trades done at List Offering Prices (LOP's) are not CTC's. The third is that you can have trades which are both CTC's and LOP's and that they can each be flagged as such..

We would ask that the MSRB more clearly define CTC trades and which definition status would prevail (if any) in case a trade satisfies both conditions of being a CTC and LOP.

**8) MSRB request for Comment:**

*Based on current market practices, what degree of "staleness" exists for transaction prices that are based on trading commitments formed between the Time of Formal Award and the Time of First Execution? Is there a need for a special indicator (not associated with an end-of-day reporting deadline) to identify these trades?*

**Lehman Comment:**

The status of these trades is problematic. As defined by the proposed rule, they are not CTC transactions as they occur after the time of award; however they are done presumably before there is enough trade information in the market to execute them. We believe that an additional indicator would be confusing to the market.

We propose that CTC's be defined as all trades done before the time of execution.

In this way, all "stale trades" (regardless of price) would be clearly segregated from current market trades for the investing community.

**9) MSRB request for Comment:**

*The MSRB anticipates that the CTC indicator could be implemented by RTRS in January 2008 in conjunction with other changes such as the expiration of the three-hour exception, assuming that the draft amendments to Rule G-34 can be implemented by that time. What amount of lead time would be necessary for dealers to implement the CTC indicator?*

**Lehman Comment:**

We believe that this question can't be answered until the industry had operational experience with the NIIDS system.

We would support a two phase implementation of the proposed rule. The first phase would be the implementation of the NIIDS system. During this phase the industry would gain real operational experience using NIIDS. After due consideration, a time frame for implementation of the CTC indicator could be made. We believe that implementing both phases with fixed time frames ahead of time is unnecessary and is asking market participants to commit to major systems changes based on suppositions.

**10) MSRB request for Comment:**

***Other Approaches to Addressing Transparency of New Issue Prices***

*One approach to address transparency issues associated with CTC transactions is to require conditional trading commitments to be reported to RTRS as they are formed rather than waiting for trade execution.*

**Lehman Comment:**

We believe that this would be highly impractical. (See SIFMA's response to this question).

**11) MSRB request for Comment:**

*Another possible approach to CTC transactions might be to reduce existing delays between the informal and formal awards. In effect, this would reduce the chance of the secondary market pricing activity that occurs without being reported in real-time. As a possible example, the MSRB could consider rules that provide for a maximum length of time (e.g., 24 hours) between the formation of an informal agreement with an issuer on pricing and the expected time of formal award. While this would reduce the flexibility that currently exists to time new issue pricing independently of the formal award, it would help reduce the potential for secondary market activity prior to the formal award and thus reduce the number of stale prices that are of the most concern.*

**Lehman Comment:**

We agree with SIFMA's position that certain institutional and statutory practices in the public finance market would make this approach impracticable.

**ROOSEVELT & CROSS**  
*INCORPORATED*

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Providence, Rhode Island 02903  
401-331-8700

242 Tenth Street, Suite C105  
Jersey City, New Jersey 07302  
201-656-7999

April 30, 2007

Justin R. Pica  
Uniform Practice Policy Advisor  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

Dear Mr. Pica:

This letter is in response to your March 5, 2007 notice of a "Request for comments on proposed rule changes to improve transaction reporting of new issue municipal securities". (MSRB 2007-10)

As you know Roosevelt & Cross, Incorporated ("R&C") is a major underwriter of municipal securities. We bid as senior book running manager on 475 competitive issues during the year ended December 31, 2006, and were awarded approximately 245. In addition R&C senior managed 40 negotiated issues, 126 note issues and 12 private placements during the same time period. Finally, we participated in hundreds of issues as co-manager, syndicate member, or selling group participant.

A challenge was presented to the industry on January 31, 2005 with amendments to MSRB Rule G12 (F) and G14 requiring the reporting and matching of municipal securities transactions within 15 minutes. In order to respond to that challenge, R&C invested in state of the art hardware, software and communication facilities. We modified our entire underwriting operation to accommodate the new requirements. New issue data bases are now established prior to competitive bid dates and populated with CUSIP numbers and other information concerning the issue, even though we know we will not be the successful bidder on many of these issues. We believe that, as a result of these innovations, we have successfully met the challenges presented by the new reporting requirements. Our monthly performance results provide solid evidence of this success.

In response to requests from market participants and various service providers for additional transparency, the Depository Trust Clearance Corporation (DTCC) has established a New Issue Information and Dissemination System (NIIDS). The overall objectives cited for developing the NIIDS platform are two-fold. The first objective was to centralize the information dissemination and to allow for a more timely, efficient and consistent mechanism for the distribution and re-dissemination of information detailing the critical data elements for a new issue. Secondly, the initiative was intended to develop greater transparency in the marketplace for new issues by allowing all market participants equal access to new issue information.

The NIIDS System requires a senior managing underwriter to provide certain information (data elements) into the system in a compressed period of time. At this time the proposed number of elements to mark a municipal issue as "trade eligible" is nine, while the number of elements required to report, compare and confirm a municipal issue is approximately 70.

R&C is in agreement with the philosophy of a central issue facility, which would make more information available on a timely basis and would increase transparency in the municipal marketplace. As a practical matter, there are obstacles to implementing the NIIDS System as it has been proposed. The most significant problem is presented by the sheer volume of data that will have to be inputted into the system. On a typical midweek day, we may bid as senior manager on ten competitive bond issues in the brief period between ten A.M. and Noon. In addition, we may also act as senior manager on one to three negotiated sales, as well as several issues of short-term notes and a private placement as well. The proposed scenario for NIIDS implementation would require us to input all of the data elements-almost eighty in total-on each issue we manage, and do so in a very brief time span. Any delay in the process could conceivably push the time of execution into the late afternoon, or even the next day. Delays seem almost inevitable, given the large number of issues we manage and the sheer volume of data to be entered.

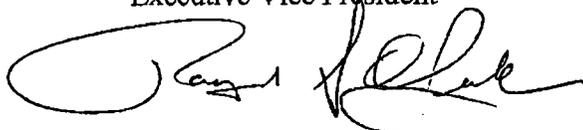
After a careful review of each of the required data elements, it is our opinion that the data entry process can legitimately be stretched out without impairing the goals of the NIIDS System. A significant number of data elements are not necessary to complete the transaction processing on the date of sale. They are essential for depository information or vendor resale, are not especially time-sensitive; and could be entered within twenty-four hours of the sale. Reducing the number of elements to be inputted at the time of sale to those that are essential to completing the transaction, and postponing the deadline for the balance by 24 hours will, we believe promote the goals of the NIIDS System without imposing unfair processing burdens on managing underwriters.

R&C believes that a logical and carefully designed splitting of the total data requirements of NIIDS into two components, the first for immediate entry and the second for entry within 24 hours, is a reasonable approach. Any redesign of this basic two-tier approach should be undertaken only after the system is operational and functioning efficiently.

Thank you for permitting us to comment on this important matter.

Very truly yours,

Raymond J. O'Sullivan  
Executive Vice President

A handwritten signature in black ink, appearing to read "Raymond J. O'Sullivan", written over the typed name and title.



May 9, 2007

Justin R. Pica  
Uniform Practice Policy Advisor  
Municipal Securities Rulemaking Board  
1900 Duke Street  
Suite 600  
Alexandria, VA 22314

Re: Notice 2007-10: Draft Rule Changes to MSRB Rule G-14 and to MSRB Rule G-34

Dear Mr. Pica:

The Securities Industry and Financial Markets Association (“Association”)<sup>1</sup> appreciates this opportunity to respond to the notice (“Notice”) issued by the Municipal Securities Rulemaking Board (“MSRB”) on March 5, 2007 (Notice 2007-10) in which the MSRB requests comment on draft rule changes to MSRB Rule G-14 and Rule G-34. The proposed change to Rule G-14 would provide for a special indicator on price reporting of new issue transactions that are based on priced trading commitments made prior to the time of formal award. The proposed changes to Rule G-34 would require underwriters to follow certain procedures for disseminating information for trade reporting of new issues. The Association supports the MSRB’s proposal for a conditional trading commitment indicator and efforts by the MSRB to improve the efficiency of new issue information to the market necessary for dealers to comply with price reporting requirements. In discussing the MSRB’s proposal, however, Association members have found it difficult to react to proposed rule changes before operational systems are in place to implement communications to (and from) the planned new information dissemination system (“NIIDS”). Our comments would be more informed if they came after broker-dealers had experience with NIIDS.

#### Proposed Amendments to Rule G-14

The purpose of the conditional trading commitment (“CTC”) special indicator is to identify priced trading commitments made before the time of formal award. Since dealers generally cannot execute transactions before the time of formal award, price reporting of

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<sup>1</sup> The Association, or “SIFMA,” brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

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CTCs, which occurs after execution, may convey stale pricing information to the market when CTC prices are compared to real time or end of day prices reported in connection with new issue transactions that occur after the time of formal award and underwriter's first execution. As indicated in the Notice, it is necessary for dealers to be advised of the time of formal award in order to accurately identify CTC transactions and to determine when CTC transactions can be executed.

1. The MSRB requests comment on whether the draft amendments to Rule G-34 relating to time of formal award would be effective in allowing dealers to identify and report CTC transactions pursuant to the proposed amendment to Rule G-14. The proposed amendments to Rule G-34 would require the underwriter to ensure that certain information is communicated to NIIDS no later than two hours after the time of formal award. The proposed amendments to Rule G-34 would also modify the definition of the time of formal award to account for the time the issuer actually notifies the underwriter of the final award or the execution of the bond purchase agreement. The Association will comment on the substance of the Rule G-34 proposed amendments below, but assuming they are adopted, the Association agrees the communication of the time of formal award to NIIDS will provide dealers with sufficient information to identify CTC transactions and determine the earliest time CTC transactions can be executed.

In addition to reviewing the Notice and the definition of List Offering Price/Takedown ("LOP/T") Transactions in current Rule G-14, we have also examined MSRB Notice 2007-03 (Jan. 19, 2007) and MSRB Notice 2004-40 (Dec. 10, 2004) describing LOP/T transactions, the LOP/T indicator and end of first day reporting for LOP/T transactions. We have reviewed the proposed CTC transaction indicator and the proposed end of first day reporting requirement for CTC transactions to develop examples (set forth below) of the combined results, including when 15 minute reporting would be required for trades executed on the first day of trading of a new issue.

The definition of a LOP/T transaction in current Rule G-14 is as follows:

"List Offering Price/Takedown Transaction" means a primary market sale transaction executed on the first day of trading of a new issue:

(A) 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

(B) by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the

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published list offering price for the security (“RTRS Takedown Transaction”).

Notice 2007-03 makes the following statements:

“The MSRB wishes to clarify that inter-dealer transactions are not included in the definition of ‘List Offering Price Transactions.’”

“The MSRB has previously clarified that the published 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.’” (citing Notice 2004-40).

When the proposal for CTC transactions is added to the current rules for LOP/T transactions, we understand the following results would apply:

- (1) A sole underwriter takes an order from a customer prior to the time of formal award (“TFA”) at the list offering price. The trade is executed at the time of first execution (“TFE”) after the TFA. The underwriter uses the LOP/T indicator for end of day reporting.
- (2) A syndicate member (“SM”) receives a conditional allocation from the managing underwriter (“MU”) at the list offering price less takedown prior to the TFA. The allocation is executed at the TFE. Both MU and SM use the LOP/T indicator for end of day reporting.
- (3) A non-syndicate, non-selling group dealer (“D”) receives a conditional commitment from MU for securities at the list offering price prior to the TFA. MU and D execute at TFE. MU and D use the CTC indicator for end of day reporting because the LOP/T indicator does not apply to inter-dealer transactions where the buying dealer is not a syndicate or selling group member. The Association recommends that the MSRB consider changing the definition of a LOP/T transaction to include this trade. As a policy matter, this trade seems to have characteristics more like a LOP/T transaction than the ordinary CTC transaction that is not at list price.

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(4) SM receives a conditional allocation from MU at the list offering price less takedown prior to the TFA. SM conditionally trades to a customer ("C") prior to the TFA at a price that is not the list offering price. MU and SM execute the allocation at the TFE and use the LOP/T indicator for end of day reporting. The trade from SM to C is executed immediately after TFE, and SM uses the CTC indicator for end of day reporting.

(5) Same facts as (4) except SM trades to C five minutes after the TFA. SM and C should agree to execute this trade after the TFE because the trade will be subject to 15 minute reporting, and SM and C may not have adequate trade eligibility information for two hours after the TFA. There is no special indicator for this trade.

2. The MSRB requests comment on the extent of "staleness" of price reports that are based on trading commitments formed between the time of formal award and the time of first execution. The time of first execution is defined in the Notice as the time the underwriter plans to execute its first transactions in the new issue. The Association believes that the customary practice in the industry is for syndicate members and selling group members not to execute orders until the managing underwriter commences its first executions since managing underwriter first executions include confirmation of allocations. There are exceptions, but the Association does not believe the number of these commitments (made during the time period after formal award and before underwriter first executions) is sufficient to require another special indicator in addition to the special indicator for CTC transactions simply to distinguish these transactions from ordinary transactions that occur after the time of first execution. The difficulty, however, is that a dealer may not know the time of formal award until two hours after it has taken place when communications are made through NIIDS. If a conditional trade is, fortuitously, made five minutes before the time of formal award it has the benefit, by definition, of being a CTC transaction with end of day reporting. An identical trade may be made five minutes after the time of formal award and will be subject to reporting 15 minutes after trade execution. The only protection the dealer has is to be certain there is not trade execution prior to the time it is made aware of the time of formal award in order to be able to determine whether the CTC indicator is to be used and whether end of day reporting is available or 15 minute reporting is required. The Association recognizes that the best option for dealers when making a trade is to agree on a time of execution when complete information is available.

3. The MSRB requests information on the amount of lead time necessary for dealers to implement the proposed Rule G-14 CTC special indicator. The question assumes that the CTC indicator could be implemented by RTRS in January 2008. Separately, the

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MSRB requests information on the lead time necessary to implement the proposed Rule G-34 requirements, and the Notice refers to a "start date for NIIDS" scheduled for August 2007. The Association wishes to emphasize that "start date" is highly ambiguous. Dealers should have six months to place into operation necessary systems after NIIDS is sufficiently final for operational personnel to have something to implement. During these six months, we urge the MSRB to work closely with operational personnel at the dealer firms and have flexibility in Rule G-14 and Rule G-34 to make minor adjustments that are found necessary in response to operational issues that do not affect the basic requirements of the proposed rule changes.

4. The Association fully appreciates the explanation in the Notice of the longstanding MSRB interpretation of MSRB rules to the effect that orders for a new issue may not be executed or confirmed until after the time of formal award. The MSRB requests comment on an approach that would require CTCs to be price reported under Rule G-14 when the commitments are made, despite the fact that they could not be executed or confirmed until after the time of formal award. The theory of this approach is that price reporting of CTC transactions before the time of formal award would provide useful real time price information. The Association opposes this approach primarily for the operational issues recognized in the Notice at both the MSRB and the dealers. A primary operational issue for the dealers is that they may not have the data necessary for Rule G-14 price reporting during the period between informal pricing with the issuer and the time of formal award when CTC transactions occur. For example, even with the proposed amendments to Rule G-34, dealers would not be likely to have final CUSIP numbers prior to the time of formal award. In addition, CTC transactions at dealer firms are likely to be negotiated by personnel on a trading desk, and because the trades are conditional, there may be no communication of the conditional trade to the personnel at the firm who process execution, price reporting and confirmations. We call your attention to footnote 20 of the Notice that recognizes the procedural issues and suggests the possible necessity for manual reporting of CTC transactions if required before the time of formal award. In fact, manual inputting would require an additional layer of operational procedures that broker-dealers are not in a position to effectuate. The footnote then suggests a second set of procedures after the time of formal award that would require review of manually reported CTCs to determine if they were executed. The operational hurdles to price report CTC transactions, before the time of formal award, far exceed any benefits.

5. The MSRB requests comment on a second alternative approach to the CTC special indicator, namely a rule of the MSRB that would require underwriters to shorten the period between pricing and the time of formal award. The Association strongly opposes this approach. As the Notice recognizes, a factor that contributes to the practice of forming conditional trading commitments is that the terms, features and offering prices of a new issue often are concluded between the lead underwriter and issuer informally well in advance of the time of formal award. There are important reasons for this time gap that distinguish public finance from corporate finance. In public finance, the time of a meeting of the governing

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body necessary to approve the terms of a bond sale may be highly inflexible. There may be requirements for publication of meeting dates well in advance of meetings, and there may be statutory requirements for the terms of sale to be approved by a meeting of the entire governing body. These legal requirements are strikingly different from corporate practices in which the approval process can be timed to respond immediately to beneficial pricing by underwriters. The board of directors of a private corporation may create a committee with authority to make a formal award with its composition intended specifically to be flexible to the timing of beneficial pricing. Public finance ordinarily has no comparable flexibility, and, therefore, a recommendation of the underwriter of favorable pricing may not occur at the same time as a scheduled meeting. To arbitrarily force pricing and a scheduled meeting to occur within, for example, a 24 hour time period, would be highly detrimental to a successful financing at the lowest possible interest rate. As the Notice recognizes, in an advance refunding there are not only the fluctuations of the municipal securities market, but also the constantly changing government securities market for escrow deposit investments, which affects in-the-money decisions of municipal issuers, totally regardless of scheduled meeting dates.

In summary, of the three alternative possibilities referred to in the Notice, the alternative proposed by the MSRB as an amendment to Rule G-14 (a CTC special indicator and end of day reporting) provides the most benefits for transparency at the least operational and external costs.

#### Proposed Amendments to Rule G-34

The Notice contains proposals for amendments to Rule G-34 on the timing of application for CUSIP numbers and submission of information to NIIDS, including requirements for the content of NIIDS submissions. The information required to be submitted to NIIDS could be processed directly by the underwriter or through intermediaries.

6. *Timing of application for CUSIP numbers.* The draft amendments would require the underwriter in a negotiated sale, and a dealer acting as financial advisor on a competitive sale, to make an initial application for CUSIP number assignment within one business day of the dissemination of any preliminary official statement (“POS”) for the issue. The Association does not agree that the POS should be the factor determining the time of initial application for CUSIP numbers. The maturity schedule in a POS is tentative and very likely to change requiring underwriters to revise the application. While CUSIP numbers can be revised, the revisions result in numbers being out of sequence, and out of sequence numbers raise questions by investors and traders, as well as complicating operations. As the Notice states, transactions cannot be executed, price reported or confirmed before the time of formal award, and it is execution, price reporting and confirmation that requires CUSIP numbers. Therefore, application for CUSIP numbers, a process that requires one hour for receipt in many instances, at the time of the POS is an arbitrarily early time that leads only to

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inefficiencies. CTC transactions before the time of formal award do not require CUSIP numbers because there is no trade execution or reporting. The Association believes the time for application for CUSIP numbers should be based on the time CUSIP numbers are required for providing information to NIIDS, which relates to the time of formal award. If NIIDS functions as expected, much of the problem associated with lack of dealer access to CUSIP numbers will be solved.

The Association recommends that, in a negotiated sale, the CUSIP number application be made no later than a time necessary to assure assignment of CUSIP numbers prior to the award of the issue. Other aspects of the proposed rule will encourage early application. For example, if an underwriter wants to shorten the period between time of formal award and time of first execution, the underwriter will be required to apply for CUSIP numbers early to allow a NIIDS submission before the time of formal award. The Association agrees with the proposed language for competitive sales, that, in the case CUSIP numbers have not been pre-assigned, the underwriter is to make application immediately after receiving notice of the award and ensure numbers are assigned prior to the dissemination of the time of first execution. The Association recommends that the rule for dealer financial advisors be limited to the last sentence of proposed Rule G-34(a)(i)(A)(3) to the effect that the advisor ensure that CUSIP number assignment occurs prior to the award of the issue.

7. *Underwriter requirement to provide information to NIIDS within certain deadlines.* The proposed rule would require that the identified information be provided to NIIDS within two hours of the time of formal award. The Notice also states that underwriters may use an intermediary to accomplish this function. The Association agrees that the information should include the time of formal award and the time of first execution, and the Association agrees with the proposed definitions of both the time of formal award and the time of first execution. For a competitive transaction, we would interpret time of formal award not to occur before there is a set quantity and price. Thus, if the underwriter is notified of the award, but there are subsequent adjustments to the maturity schedule, there is no formal award until adjustments are final. The Association would appreciate MSRB commentary when the rule is finalized that it agrees with this interpretation. The "trade eligibility" information is properly treated as the third category of information necessary to complete the efficiencies being promoted by the proposed amendments to Rule G-14 and Rule G-34. The Association appreciates the flexibility intended by the reference to "All other information identified as required for 'trade eligibility' in [NIIDS]." However, the "trade eligibility" information for NIIDS is an ongoing project, and it may be necessary to have further clarification of the trade eligibility data required for Rule G-34.

8. *Advance notification of time of first execution.* The Association agrees that the underwriter's planned time of first trade executions is an appropriate item of information to be communicated to dealers to allow dealers to set up automated trade processing systems in anticipation of the underwriter's first executions. The Association further agrees that a two-

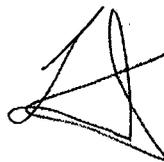
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hour time frame is reasonable, in most circumstances, between the time information is submitted to NIIDS and the time of planned first execution. Nevertheless, the Association recognizes that two hours is an arbitrary time figure, and it may be useful for the MSRB to have the flexibility to make adjustments in response to circumstances. Technology may develop to make a shorter period reasonable, or it may be concluded that two hours in the context of overnight calculations is an unnecessarily long period. We recommend that the MSRB have the flexibility to shorten the two hours by changes made to the RTRS Users Manual. This question serves to underscore the basic point made at the beginning of this comment letter. Until dealers have actual operating experience with NIIDS in its final form, it is difficult to predict which time periods will actually work. If NIIDS functions efficiently, it may be appropriate to shorten the two hour period.

9. *Short-term instruments.* The Notice requests comments on whether certain types of new issues have special characteristics that would present difficulty for underwriters to comply with the draft amendments to Rule G-34. The short-term instruments defined in current Rule G-14 for end of day price reporting (variable rate instruments, auction rate products, and commercial paper) each have operational issues that present problems distinct from long-term fixed-rate securities. For example, intermediaries may not be available to process the fields for trade eligibility with the result that underwriters may themselves be required to populate the fields and have systems in place to enter the data in the two hour period allowed by the proposed rule. The Association recommends that there be a phased-in period for Rule G-34 compliance regarding short-term securities that have end of day reporting under Rule G-14. A phase-in period will allow time for system changes to be made to accommodate operational requirements necessary for short-term securities.

We appreciate the opportunity to comment on this rulemaking. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 646.637.9230 or via email at [lnorwood@sifma.org](mailto:lnorwood@sifma.org).

Respectfully submitted,



Leslie M. Norwood  
Vice President and  
Assistant General Counsel

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cc: Mr. Christopher Taylor, Municipal Securities Rulemaking Board  
Diane Klinke, Esq., Municipal Securities Rulemaking Board  
Hal Johnson, Esq., Municipal Securities Rulemaking Board

***Securities Industry and Financial Markets Association***

Municipal Executive Committee  
Municipal Legal Advisory Committee  
Municipal Operations Committee  
Municipal Syndicate & Trading Committee

## MSRB NOTICE 2007-10 (MARCH 5, 2007)



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### REQUEST FOR COMMENT ON PROPOSED RULE CHANGES TO IMPROVE TRANSACTION REPORTING OF NEW ISSUE MUNICIPAL SECURITIES

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on proposed rule changes to improve the trade reporting and price transparency of transactions effected in new issues of municipal securities. The proposed rule changes include draft amendments to Rule G-34, on CUSIP Numbers and New Issue Requirements, that would require underwriters to follow certain procedures for disseminating new issue information necessary for trade reporting in the issues. The notice also includes a proposed requirement for a special indicator on reports of new issue transactions that are based on priced trading commitments made prior to the formal award of a new issue. This proposed requirement is a revised version of one first proposed for comment in April 2006, and would apply to brokers, dealers and municipal securities dealers ("dealers") reporting trades under Rule G-14.

Although the proposed rule changes are primarily operational in nature, they would affect basic underwriting practices such as the scheduling and announcement of initial trade executions in a new issue. The proposed rule changes also present important price transparency issues relating to transactions that are priced at a time significantly prior to the time that the transactions are executed and reported. Comment is requested from market participants on all aspects of the proposed rule changes, including other measures that could improve the timeliness and quality of price transparency information for new issues.

Comments on the proposed rule changes should be submitted to the MSRB by May 3, 2007 and may be directed to Justin R. Pica, Uniform Practice Policy Advisor.

## SUMMARY OF PROPOSED RULE CHANGES

The draft amendments to Rule G-34 would require underwriters to utilize a new centralized electronic system for improved dissemination of the new issue information necessary for trade processing and trade reporting in new issues. The system, called the "New Issue Information Dissemination System" ("NIIDS"), will be operated by Depository Trust and Clearing Corporation ("DTCC") and is the result of a broad-based industry initiative that has taken place over the past two years. The system is designed to serve as a central point for accepting standardized new issue information from underwriters and immediately disseminating the data in electronic form to information vendors for further re-dissemination.

The draft amendments would require underwriters to submit certain new issue information to NIIDS, either directly or through intermediaries. This information includes the securities data that is typically required by the automated trade processing and reporting systems used by dealers, and certain other new issue information defined in the draft amendments. The draft amendments prescribe timetables for data submission and other underwriter procedures that are intended to ensure that all dealers have timely access to the new issue information that is needed for compliance with trade reporting requirements.

### Special Indicator for "CTC Transactions"

This notice also requests comment on a revised version of a requirement to identify certain new issue transactions called "Conditional Trading Commitment transactions" ("CTC transactions") with a special indicator in the trade reports made under Rule G-14. A "CTC transaction" is defined as "any transaction that is based upon a priced trading commitment made prior to the 'Time of Formal Award' for a new issue." Because dealers generally cannot execute a transaction in a new issue prior to the formal award, these transactions may have prices that are significantly "stale" in relation to the reported time of execution. Under existing transaction reporting procedures, these are sometimes indistinguishable from other transactions that reflect more current market pricing activity. The proposed special condition indicator would allow identification of prices that are associated with CTC transactions and that have the potential to be significantly stale.

The special condition indicator for CTC transactions initially was proposed for comment in April 2006. Among other points, commentators noted that operational issues, including the lack of timely and reliable information on "Time of Formal Award," would make it difficult or impossible for dealers to comply with the requirement until NIIDS becomes operational. The draft amendments to Rule G-34 are designed to address operational issues associated with the proposal by amending the definition of "Time of Formal Award" and by requiring underwriters to disseminate that time through NIIDS within two hours of its occurrence. The special indicator requirement also has been revised to provide an end-of-day trade reporting deadline for CTC transactions.

Although the proposed rule changes would allow the identification of stale prices, they do not generally address the underlying market practices that create stale-priced trade reports. The final section of this notice discusses the factors that create CTC transactions and requests comment on other measures that might improve price transparency of transactions in new issues of municipal

securities.

#### **Draft Amendments to Rule G-34**

The draft amendments to Rule G-34 contain a general requirement for underwriters to ensure that certain new issue information is submitted to NIIDS as soon as possible in the underwriting process. The required information would include certain securities information necessary for automated trade processing, the "Time of Formal Award" and the "Time of First Execution." Because CUSIP numbers are a prerequisite for providing any of this information, the draft amendments would accelerate the CUSIP application deadlines in Rule G-34, in most cases requiring that the application be made within one business day after dissemination of a Preliminary Official Statement.

The proposed outside deadline for completing the submission of all required information to NIIDS is two hours after the "Time of Formal Award." This term is re-defined in the draft amendments as: (i) for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award; and (ii) for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. The outside deadline for the NIIDS data submission would help ensure that dealers in all cases can identify CTC transactions and be prepared to process and report transactions within a reasonable period of time after the underwriter becomes aware of the formal award of the issue.

The second major objective of the draft amendments is to provide an "advance notification" requirement for underwriters. Included in the information that the underwriter must submit to NIIDS within two hours of the Time of Formal Award is the "Time of First Execution," which is defined as the time the underwriter plans to execute its first transactions in the new issue. The draft amendments provide that an underwriter's "Time of First Execution" must be at least two hours after all necessary new issue information has been submitted to NIIDS. The advance notice requirement is intended to ensure that all dealers are aware of the time that an underwriter intends to initiate its transactions in a new issue and have time to prepare for trade processing and reporting in the issue.

The draft amendments propose several provisions to address specific situations that may occur in the underwriting process for municipal securities. Only the hours between 9:00 A.M. and 5:00 P.M. Eastern Time would be counted for purposes of the two-hour requirements in the draft amendments to ensure that NIIDS submissions are not required outside of normal business hours when the Time of Formal Award occurs late in the day. Situations also are addressed in which the formal award of an issue is a scheduled pro forma action by the issuing entity and the underwriter is able to announce a reasonably firm anticipated Time of Formal Award.

#### **Anticipated Implementation Schedule**

The effective date for the draft amendments to Rule G-34 is in part dependent upon the implementation of NIIDS, which at this time is scheduled for August 2007. The MSRB anticipates that it would be possible to implement the draft amendments immediately after the planned date for implementation of NIIDS in September 2007. The effective date for the revised CTC indicator is dependent both upon implementation of NIIDS and the draft amendments to Rule G-34. The MSRB anticipates that the CTC indicator could be implemented as early as January 2008. This notice

requests comment on the lead time that would be necessary to prepare for both of the proposed rule changes.

## **BACKGROUND**

Under MSRB Rule G-14, on transaction reporting, all brokers, dealers and municipal securities dealers (“dealers”) are required, with limited exceptions, to report transactions in municipal securities within 15 minutes of trade execution. The Real-Time Transaction Reporting System (“RTRS”) receives these trade reports and disseminates them immediately to provide market price transparency. The transaction reporting procedures under Rule G-14 allow dealers to report certain primary market transactions effected at the published list offering and at syndicate takedown prices at the end of the day.[1] However, the initial transactions that do not qualify for one of these exceptions generally must be reported within 15 minutes of trade execution.[2] This requirement is intended, among other things, to make secondary market transactions in a new issue transparent within 15 minutes of trade execution and thus to provide real-time information on current market pricing activity.[3]

### **Expiration of Three-Hour Exception in Trade Reporting Rules**

In connection with previous rulemaking, the MSRB has received a number of comments noting that dealers often lack timely access to electronically formatted securities information necessary to process and report municipal securities transactions in a real-time environment. Based on comments received in connection with the January 2005 implementation of real-time transaction reporting requirements, the MSRB included a temporary “three-hour exception” in Rule G-14, giving a dealer extra time to make a transaction report when the dealer does not have access to securities information necessary to make a trade report at the time of execution.[4] The MSRB noted that the exception was temporary and meant to allow the industry time to improve systems for delivering necessary securities information to dealers in time to meet the 15-minute reporting deadline.

In an October 2005 letter to the MSRB, the Bond Market Association (“TBMA”)[5] noted that problems continued in obtaining timely access to securities information necessary for trade reporting, particularly the trade reporting of new issue transactions. TBMA requested that the MSRB extend the temporary three-hour exception and allow additional time for the industry to make improvements. The letter described industry efforts to work with DTCC to create a central system for collecting and disseminating securities information on new issues, which would allow more timely reports of new issue transactions. The letter also suggested that there would be a need for MSRB rules requiring underwriters to submit information to the system within specified timeframes. Based on TBMA’s letter, the MSRB subsequently filed a rule change extending the three-hour exception for when-issued transactions through the end of 2007, noting that no further extensions would be added.[6]

### **Proposed Indicator for Conditional Trading Commitment Transactions**

A second issue that has been identified with respect to new issue price transparency is that some prices disseminated by RTRS may be significantly “stale” with respect to the reported time of execution. [7] The most significant delays between the pricing and execution of new issue

transactions arise from trading commitments that are made by dealers in response to firm, priced orders received prior to the formal award of a new issue. Under existing MSRB rules, it is not possible for dealers to execute, confirm or report transactions in a new issue until after the formal award. For this and other reasons, the dealer's commitment to execute such an order is "conditional," meaning that the order will not be executed, if at all, until after the formal award of the issue is made. The MSRB accordingly has referred to these trading commitments as "conditional trading commitments" or "CTCs." As many as two days may elapse between the time that CTCs begin in the market and the time that the orders are ultimately executed as transactions. During this time significant numbers of CTC's may be pended for execution, including some representing secondary market pricing activity in a new issue. Moreover, it is not generally possible to distinguish these transaction reports from ones that represent current secondary market pricing activity occurring in the market.

In April 2006, the MSRB requested comment on a proposed special condition indicator to be used on trade reports of "CTC transactions." A "CTC transaction" was defined as any transaction priced prior to the "Time of Formal Award." The request for comment noted that the term "Time of Formal Award" is defined in Rule G-34 as: "(i) for competitive underwritings, the time that the issuer announces the award; and (ii) for negotiated underwritings, the time the contract to purchase the securities from the issuer is executed."

Comments received on the April 2006 proposal strongly suggested that dealer compliance with the proposed indicator requirement would be difficult or impossible due to the lack of any reliable and timely source of information on "Time of Formal Award" for new issues. Commentators also observed that, as a result of the time needed by an underwriter and other dealers to prepare trade processing systems for a new issue, a delay may exist between the Time of Formal Award and the time that an underwriter initiates the initial trade executions in a new issue. It was noted that transactions priced during this period also are stale, albeit to a lesser degree than CTC transactions, and suggested that the underwriter's time of first execution should be used to identify stale-price transactions rather than the Time of Formal Award. TBMA's comment also suggested that solutions to the operational problems in identifying stale-price transactions would depend on implementation of a central system for collecting and disseminating new issue information, which could provide a timely and reliable source of information such as the Time of Formal Award and the underwriter's anticipated time for initial trade executions.

### **The NIIDS Initiative**

TBMA, industry members, securities information vendors and other service providers in the municipal securities market have worked extensively with DTCC over the past two years to develop a centralized system for collecting and communicating new issue securities information. As a result of this industry initiative, DTCC, a securities clearing agency registered with the SEC, plans to implement the New Issue Information Dissemination System or "NIIDS" in August 2007. In addition to providing an improved mechanism for disseminating the new issue information necessary for trade processing, the system also would use the information for purposes of establishing depository eligibility for new issues. The MSRB has noted the substantial progress that has been made on NIIDS and has alerted dealers to the importance of the initiative.<sup>[8]</sup>

Under current practices in the municipal securities market, each information vendor works separately to obtain information from offering documents and underwriters and each vendor's success depends in large part on the voluntary cooperation of underwriters. It is not unusual for information vendors to have inconsistent information or for some information vendors to receive information before others. Consequently, critical new issue information may be missing or inaccurate in the automated trade processing systems used by dealers to report the initial trades in new issues. This situation frequently results in late trade reports or trade reports with inaccurate data that subsequently must be canceled and resubmitted or amended.

NIIDS is designed to improve the process by which new issue information is provided by underwriters to information vendors by collecting new issue information about a new issue from underwriters or their representatives in an electronic format, and then making that data immediately available to the information vendors that provide such information to market participants. The electronic techniques that will be used by NIIDS are designed to ensure that information is disseminated as quickly and efficiently as possible after the information is made available by underwriters

Although the amount of securities information needed for trade reporting under Rule G-14 is limited,<sup>[9]</sup> many of the automated trade processing systems used to report trades currently need more extensive securities information (essentially the information necessary to produce a trade confirmation) before a trade can be reported. The industry initiative on NIIDS has resulted in a relatively comprehensive list of new issue securities data that will be collected and disseminated by NIIDS, including Time of Formal Award and Time of First Execution. A listing of the new issue securities data that will be collected and disseminated by NIIDS is available on DTCC's web site at: <http://www.dtcc.com/reengineering/underwriting/specs.html>.

#### **DRAFT AMENDMENTS TO RULE G-34**

Currently, Rule G-34 requires underwriters<sup>[10]</sup> to apply for CUSIP numbers within specific deadlines and to transmit a limited amount of information about a new issue such as the coupons, maturities and issue closing date to DTCC. The rule also contains a requirement for Time of Formal Award to be disseminated to market participants that may trade the new issue. The draft amendments to Rule G-34 would: (i) accelerate the timing for CUSIP number assignment; (ii) require underwriters to submit certain new issue information to the NIIDS system for re-dissemination to market participants; and (iii) require underwriters to set and disseminate a "Time of First Execution" that allows time for market participants to access necessary information in preparation for trade reporting prior to beginning trade executions in the issue.

#### **Timing of CUSIP Number Assignment**

CUSIP numbers are a required data element for automated trade processing and trade reporting systems and will be a prerequisite for entry of new issue information into NIIDS. Timely processing of new issue transactions requires that CUSIP numbers be assigned as early as possible in the underwriting process. Rule G-34 contains various requirements for underwriters, and for dealers acting as financial advisors on competitive sales, to apply to the CUSIP Service Bureau for CUSIP number assignment. The current deadlines are based on: the time the bond purchase agreement is

executed (for underwriters in negotiated sales); the time of the issuer's award (for dealers acting as financial advisors in competitive sales); and the time of the first execution of a trade in the issue (for underwriters in competitive sales). The draft amendments would set new deadlines designed to ensure CUSIP number assignment occurs as soon as possible in the underwriting process, allowing for the timely submission of new issue information to NIIDS.

The draft amendments would require the underwriter in a negotiated sale and a dealer acting as financial advisor on a competitive sale to make an initial application for CUSIP number assignment within one business day of the dissemination of any Preliminary Official Statement (POS) for the issue. The underwriter then would update the application, if necessary, when the information required for final CUSIP number assignment becomes available. Based on conversations with the CUSIP Service Bureau, the MSRB understands that this process generally would speed the assignment of final CUSIP numbers for a new issue even though maturity dates and tentative CUSIP number assignments in some cases may need to be changed after the initial application is filed.

For negotiated issues that are sold without a POS, the draft amendments would require that an application must be made no later than the time that the pricing information for the issue is determined. For competitive deals sold without a POS, the draft amendments would require a dealer acting as a financial advisor to make an application for CUSIP number assignment within one business day of dissemination of a notice of sale. The draft amendments also state a general requirement that the underwriter on a negotiated underwriting and a dealer acting as a financial advisor on a competitive deal ensure that final CUSIP number assignment occurs prior to the formal award of the new issue.<sup>[11]</sup>

Rule G-34 currently requires the underwriter in a competitive sale to apply for CUSIP numbers if an application has not already been made by the issuer or the issuer's representative. The MSRB understands that CUSIP numbers for competitively sold issues generally are assigned by the date of sale, but that on occasion this is not done.<sup>[12]</sup> Dealers have noted that, in these situations, automated trade processing and real-time trade reporting for the issue may be delayed because of the time necessary for the underwriter to obtain CUSIP numbers after the formal award. The draft amendments clarify the underwriter's existing responsibility in such situations to apply for CUSIP numbers immediately after receiving the award.

#### **Underwriter Requirement to Provide Information to NIIDS within Certain Deadlines**

The draft amendments would require underwriters to transmit new issue information to NIIDS within deadlines that are intended to ensure that the information reaches information vendors and is further re-disseminated for use in automated trade processing systems by the time that trade executions begin in a new issue. The specific items of information required to be submitted are those generally considered necessary for automated trade processing in an issue and are designated in the NIIDS system as items necessary for "Trade Eligibility."

Underwriters would be required to submit this information electronically in accordance with the methods and formats stated for NIIDS system users. The information could be provided through computer-to-computer links or through a web interface allowing manual input of data.<sup>[13]</sup> Although the underwriter would be ultimately responsible for timely, comprehensive and accurate data

submission, the draft amendments allow for use of an intermediary to accomplish this function.<sup>[14]</sup> DTCC has stated that it will not charge underwriters for accepting or re-disseminating NIIDS data.<sup>[15]</sup>

NIIDS is designed so that, once CUSIP numbers are assigned to a new issue, information about the issue can be submitted as it becomes available. The draft amendments to Rule G-34 would require underwriters to provide information specified by NIIDS as required for Trade Eligibility as soon as it is available, with a final deadline for all such information to be provided no later than two hours after the Time of Formal Award, which would be redefined as discussed below. The draft amendments to Rule G-34 also state that only the hours between 9:00 A.M. and 5:00 P.M. Eastern on an RTRS Business Day are counted for purposes of the time tables listed in the draft amendments. For example, if the Time of Formal Award occurs at 6:00 P.M. Eastern, the time tables listed in the draft amendments would not commence until 9:00 A.M. Eastern on the next RTRS Business Day.

#### **Revised Definition of "Time of Formal Award"**

The Time of Formal Award represents the earliest time that a dealer can execute transactions in a new issue and is used in Rule G-34 and in the draft amendments to set certain deadlines. The draft amendments to Rule G-34 propose a minor change to the current definition of "Time of Formal Award" for purposes of Rule G-34 timetables. The MSRB understands that underwriters are not always present at the time the issuer executes a bond purchase agreement or formally confirms an award of a competitive issue. Some time may elapse between this time and the time at which the underwriter becomes aware of the issuer's action and this delay may not be under the control of the underwriter. To address this issue, the draft amendments state that for purposes of Rule G-34, "Time of Formal Award" is defined as:

- for competitive issues, the *later* of the time the issuer formally awards the issue or the time the issuer notifies the underwriter of the award; and,
- for negotiated issues, the *later* of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution of the agreement.

The Time of Formal Award is one of the required information items to be submitted to NIIDS. It is therefore subject to the general requirement to be submitted as soon as it is available as well as the ultimate deadline for submission of all required data, which is two hours after the Time of Formal Award. These requirements should ensure that all information necessary for trade reporting and identification of CTC transactions is available through NIIDS no later than two hours after the Time of Formal Award.

#### **"Time of First Execution" and Advance Notification Requirement**

The second major component of the draft amendments to Rule G-34 is an advance notification requirement that would ensure that all dealers have advance notification of the underwriter's planned time for first trade executions and can be prepared to process trade executions by that time. Comments received on the April 2006 CTC indicator proposal stated that, under current industry

practices, underwriters do not always disseminate the time that they intend to begin trade executions. Consequently, dealers that are not in the underwriting group sometimes do not know when their own transactions in the issue should begin and this may negatively affect the ability of those dealers to report their initial transactions in a timely and accurate manner or to coordinate their reported time of trade execution on inter-dealer transactions with members of the underwriting group.

To address this concern, the draft amendments would require the underwriter of a new issue to disseminate the "Time of First Execution," which is the underwriter's anticipated time for beginning trade executions in a new issue. Once an underwriter has completed the submission of all required information to NIIDS, the information then will need to be re-disseminated to other dealers that may have trades in the issue and these dealers (and service bureaus) will need to "set up" automated trade processing systems with the new issue information. To allow time for this process to occur, the underwriter would be required to provide a Time of First Execution that is at least two hours after the time that all required information is provided to NIIDS.

The draft amendments would accommodate several situations that may occur in the underwriting of new issues of municipal securities. For example, the underwriter would be allowed to submit an anticipated Time of Formal Award rather than wait for the actual Time of Formal Award if the underwriter and issuer have agreed in advance on a Time of Formal Award. This may be the case if the formal award is a scheduled pro forma requirement by an issuer's governing body and all details necessary for the formal award have been finalized and submitted to NIIDS in advance. The underwriters could in these cases complete its submissions to NIIDS using the anticipated Time of Formal Award. By doing this, the underwriter could schedule its Time of First Execution to occur immediately after the formal award, rather than waiting two hours. Any changes to these times would require correction in NIIDS as soon as known. As long as the two-hour notification period has been met once, however, it would not be necessary to start a new notification period as a result of minor adjustments to the Time of Formal Award or Time of First Execution.

#### **Request for Comment on Draft Amendments**

Comment is requested on all aspects of the proposed changes to Rule G-34. Consideration of the following questions may be helpful in providing comments:

- Underwriters on negotiated issues may begin entering information into NIIDS as soon as CUSIP numbers are assigned, while competitive underwriters will only begin to enter information after bids are opened. Should the two-hour period after the Time of Formal Award for completing the information submission to NIIDS be different for negotiated and competitive underwritings? Would the underwriter that is awarded a competitive deal for which CUSIP numbers have not been assigned be able to apply for and obtain CUSIP numbers and transmit information necessary for Trade Eligibility to NIIDS within two hours of the Time of Formal Award?

**It is my opinion that competitive issues should be given 2 hours after cusips are available because they are usually not requested until after the issue has been awarded.**

- The Time of Formal Award for a competitive issue is currently defined with reference to the issuer's "announcement" of the award. Questions may exist on when the "formal award" should be deemed to occur in certain circumstances, for example on such competitive underwritings in which the quantities of individual maturities must be determined after the lowest bid is accepted. Commentators are invited to provide comments on alternative formulations of Time of Formal Award to address special situations.

**It is my opinion that Time of Formal Award should be when the FA and/or issuer has verified all bids and has determined which bidder was the lowest bid.**

- Since electronically formatted information can be retransmitted immediately, the MSRB believes that the two-hour advance notification period prior to the Time of First Execution is sufficient for vendors and dealers and service bureaus to receive and enter information disseminated from NIIDS into their own systems. Is two hours a sufficient amount of time? Could the advance notice requirement be shortened? Would it be appropriate to provide different periods of advance notification for competitive and negotiated underwritings?

**It is my opinion that the advance notice requirement should not be shortened at all in the beginning. Once it has been implemented for a period of time (around 6 months) it could always be shortened or lengthened as it is needed.**

- Only the hours between 9:00 A.M and 5:00 P.M. Eastern Time on an RTRS Business Day are used for purposes of the time tables listed in the draft amendments. If an underwriter does not obtain and transmit all information necessary for Trade Eligibility to NIIDS by 3:00 P.M. Eastern Time, the underwriter would not be able to set a Time of First Execution until the following day. The MSRB is aware that this may affect West Coast underwriters more than those on the East Coast, but does not believe it would be possible to use "local time" in the rule given that dealers in different time zones trade with each other. The MSRB, however, requests comment on any suggestions for alternative approaches that would help address time zone issues.

**It is my opinion that the 9-5 hours are sufficient.**

- The draft amendments would apply to all types of new issues of municipal securities. Do certain types of new issues, such as issues that have long forward delivery periods or short-term instruments, have special characteristics or employ the use of different "bookrunning" services that would present difficulty for underwriters to comply with the draft amendments to Rule G-34?

**It is my opinion that we would not have any special circumstances or difficulty with this issue.**

- The schedule for implementing the proposed rule changes is dependent on the operational start date for NIIDS, which at this time is scheduled for August 2007. How much lead time would be necessary for underwriters to implement changes required to use the NIIDS system?

**It is my opinion that the NIIDS system would need to be tested by all users. I question that if a firm clears through a clearing house if the clearing house or the broker/dealer will be responsible for reporting. I would prefer that the broker/dealer be responsible for reporting. I would like to see a test period of the NIIDS system before we start implementing the CTC transactions. Another suggestion is to have a centralized system to input all presale orders and execute all allotments at TOE.**

## **CONDITIONAL TRADING COMMITMENT INDICATOR**

The MSRB is requesting additional comment on the proposed requirement for CTC transactions to be reported with a special condition indicator. The definition of "CTC transaction" and other technical requirements for the CTC indicator described in the April 2006 CTC indicator proposal have not been changed, but an end-of-day reporting deadline for CTC transactions has been added.<sup>[16]</sup> In addition, the draft amendments to Rule G-34 address operational concerns that were suggested by commentators on the April 2006 proposal.

### **Comments Received on April 2006 Proposal**

Some of the comments on the April 2006 CTC indicator proposal focused on operational barriers to compliance, particularly the lack of timely access to information necessary for dealers to accurately identify CTC transactions in the initial trade reports made for a new issue. The provisions relating to "Time of Formal Award" contained in the draft amendments to Rule G-34 are intended to reduce these operational concerns by ensuring that underwriters disseminate a "Time of Formal Award" for each new issue as soon as possible and no later than two hours after its occurrence. Other provisions in the draft amendments would re-define "Time of Formal Award" to accommodate situations in which an underwriter may not be informed of the formal award when it occurs.

Comments on the April 2006 CTC indicator proposal noted that the prices for CTC transactions are generally "stale" with respect to the reported time of trade execution. Several comments suggested, in light of the general operational difficulties in reporting new issue transactions within 15 minutes of execution and the marginal value of stale prices in real-time transaction reporting, that CTC transactions should be given an end-of-day reporting deadline. Based on current transaction reporting procedures and market practices, the MSRB believes that these observations are accurate and therefore has included an end-of-day exception from the fifteen minute reporting requirement for all CTC transactions in the revised proposal.

The MSRB has not adopted the view suggested by some commentators that the trading commitments formed in response to firm orders between the Time of Formal Award and the Time of First Execution also should be subject to an end-of-day reporting deadline. The MSRB recognizes that the prices of these transactions also may be somewhat stale with respect to the reported time of execution, but notes that such prices generally will be much more current than those for CTC transactions. The draft amendments to Rule G-34 proposed in this notice seek to ensure that the new issue information necessary to execute, process and report transactions in new issues is provided to the market as quickly as possible as a means to minimize the time necessary for operational preparations between the Time of Formal Award and the Time of First Execution.

The MSRB also has considered comments that the CTC indicator is unnecessary, either because it is currently possible to identify CTC transactions in RTRS trade data or because all transaction prices reported on the initial day of trade executions should be considered stale. Although many CTC transactions represent primary market activity in the form of List Offering Price / Takedown transactions and already are subject to a special indicator requirement, the MSRB understands that a significant number of CTC transactions may represent secondary market pricing activity that has occurred prior to the Time of Formal Award. In such situations, it is likely that secondary market trading will also occur on the day that the initial trades in the issue are executed and these trade reports will contain valuable real-time price information. Under existing trade reporting requirements, however, it is not possible to know if these secondary market prices are current market prices or are stale prices that were determined earlier in conditional trading commitments.

The MSRB continues to believe that, under existing market practices and trade reporting rules, it is necessary to adopt procedures allowing users of transparency information to identify the stale prices represented by CTC transactions and distinguish them from those that reflect current secondary market pricing activity.

#### **Request for Additional Comment on CTC Indicator**

Comment is requested on the revised CTC indicator requirement and provisions in the draft amendments of Rule G-34. Consideration of the following questions may be helpful in providing comments:

- Would the provisions in the draft amendments to Rule G-34 relating to “Time of Formal Award” be effective in allowing dealers to identify and report CTC transactions?

#### **I think that the system you would be implementing is sufficient.**

- Based on current market practices, what degree of “staleness” exists for transaction prices that are based on trading commitments formed between the Time of Formal Award and the Time of First Execution? Is there a need for a special indicator (not associated with an end-of-day reporting deadline) to identify these trades?

#### **It is my opinion that a special indicator is needed for presale trades. Degree of staleness varies from deal to deal so I think that a uniform practice is needed.**

- The MSRB anticipates that the CTC indicator could be implemented by RTRS in January 2008 in conjunction with other changes such as the expiration of the three-hour exception, assuming that the draft amendments to Rule G-34 can be implemented by that time. What amount of lead time would be necessary for dealers to implement the CTC indicator?

#### **Since we clear through Pershing, they would be able to answer this question better than I would.**

### **TRANSPARENCY OF NEW ISSUE TRANSACTION PRICES**

Although the CTC indicator would make it possible to identify trade reports with prices that may be significantly stale, it does not generally address the underlying market practices that cause CTC transactions and stale prices. The MSRB is requesting comment on other measures that might improve the nature of price information provided with respect to new issue transactions.

### **Reasons for Conditional Trading Commitments**

Two basic factors contribute to the creation of CTC transactions. First, a transaction in a new issue generally cannot be finalized and executed until after the formal award of the issue. In part, this is because of a longstanding interpretation of MSRB rules to the effect that orders for a new issue may not be executed or confirmed until: (i) in competitive underwritings, the award by the issuer; and (ii) in negotiated underwritings, the execution of the bond purchase agreement.<sup>[17]</sup> This interpretation reflects a general understanding that, prior to these times, the terms and features of the securities and the nature of the commitment of the issuer to issue the securities have not been reduced to writing in a legally binding manner between the underwriter and issuer. Based on this understanding, this concept of a "formal award" has been incorporated into the definition of "Time of Formal Award" that currently exists in Rule G-34.<sup>[18]</sup>

The second factor that contributes to the practice of forming conditional trading commitments is that, particularly in the case of negotiated underwritings, the terms, features and offering prices of a new issue often are concluded between an underwriter and issuer in an "informal" or "oral" award well in advance of the time that a formal award can be made. In these cases, the timing of the informal award is influenced by market factors relating to the pricing of issue. The delays in completing the bond purchase agreement may occur for several reasons, such as the time needed to reduce the oral agreement to writing, the time needed obtain execution of the document by the appropriate issuer personnel, or the need to obtain an official action from the issuer's governing body. An additional consideration, primarily affecting advanced refunding issues, is that the quantity of securities to be issued in specific maturities of the issue may need to be adjusted or finalized after the informal award. This consideration is also relevant in explaining why trading commitments made prior to the formal award are conditional in nature.

### **Other Approaches to Addressing Transparency of New Issue Prices**

As discussed above, the delay in obtaining the formal award for a new issue may extend for as long as two days. During this time, market participants, including those that are not in the underwriting group and subject to offering price agreements, are aware of the terms of the oral award and sometimes effectively begin to "trade" the issue by forming conditional trading commitments. In these cases, the pricing activity represented by the conditional trading commitments is not made available in real-time and will be stale when it is ultimately reported.

A primary objective of RTRS is to allow market participants to monitor market price levels on a real-time basis. The MSRB has stated that the information disseminated in price transparency products is one of the factors dealers should use in pricing transactions in municipal securities.<sup>[19]</sup> One approach to address transparency issues associated with CTC transactions is to require conditional trading commitments to be reported to RTRS as they are formed rather than waiting for trade execution. This would represent a substantial change in current transaction reporting

procedures used by dealers and would present a number of operational issues.<sup>[20]</sup> The impact of such a change, however, could be minimized to some extent if the requirement were limited to CTCs that are not list offering price or takedown transactions.

Another possible approach to CTC transactions might be to reduce existing delays between the informal and formal awards. In effect, this would reduce the chance of the secondary market pricing activity that occurs without being reported in real-time. As a possible example, the MSRB could consider rules that provide for a maximum length of time (*e.g.*, 24 hours) between the formation of an informal agreement with an issuer on pricing and the expected time of formal award. While this would reduce the flexibility that currently exists to time new issue pricing independently of the formal award, it would help reduce the potential for secondary market activity prior to the formal award and thus reduce the number of stale prices that are of the most concern.

Comment is requested on the approaches suggested above and on any other measures that could be taken to address stale prices and improve the transparency of new issue transaction pricing.

Questions about this notice may be directed to Justin R. Pica, Uniform Practice Policy Advisor.

March 5, 2007

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#### **Rule G-14: Reports of Sales or Purchases<sup>\*</sup>**

(a) through (b) No change.

#### **Rule G-14 RTRS Procedures**

(a) General Procedures.

(i) No change.

(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) through (C) No change.

(D) A dealer effecting a transaction that is the result of a "Conditional Trading Commitment" as described in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions shall report such trades by the end of the day on which the trade is executed.

(iii) through (vi) No change.

(b) through (d) No change.

**Rule G-34: CUSIP Numbers and New Issue Requirements**

(a) New Issue Securities.

(i) Assignment of CUSIP Numbers.

(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter") and each broker, dealer or municipal securities dealer acting as a financial advisor in a competitive sale of a new issue ("financial advisor") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue, as follows:

~~(A) Except as otherwise provided in this section (a), each broker, dealer or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue ("underwriter") shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue. The underwriter shall make such application as promptly as possible, but in no event later than, in the case of negotiated sales, a time sufficient to ensure assignment of a CUSIP number or numbers prior to the time the contract to purchase the securities from the issuer is executed; or, in the case of competitive sales, the time of the first execution of a transaction in the new issue by the underwriter. A broker, dealer or municipal securities dealer acting as a financial advisor to an issuer in connection with a competitive sale of an issue shall ensure that application for a CUSIP number or numbers is made in sufficient time to permit assignment of CUSIP numbers prior to the time of award. In making an application for CUSIP number assignment, the following information shall be provided:~~

(1) The underwriter in a negotiated sale shall make an application by no later than one business day after the dissemination of any Preliminary Official Statement (POS) for the issue, and, if no POS is disseminated, shall make such application by no later than the time that pricing information for the issue is finalized. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(2) The underwriter in a competitive sale for which no CUSIP numbers have been pre-assigned shall make an application immediately after receiving notification of the award from the issuer. The underwriter in a competitive sale shall ensure that CUSIP numbers are assigned prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

(3) A financial advisor shall make an application by no later than one business day after the dissemination of any POS for the issue, and, if no POS is disseminated, shall make such application by no later than one business day after dissemination of a notice of sale. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP numbers assignment occurs prior to the award of the issue.

(4) In making applications for CUSIP number assignment, the following information shall be

provided:

(a) (4) through (h) (8) No change.

(5) Any changes to information identified in this paragraph (a)(i)(A) and included in an application for CUSIP number assignment shall be provided to the Board or its designee as soon as they are known but no later than a time sufficient to ensure final CUSIP number assignment occurs prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

(B) through (D) No Change.

(ii) Application for Depository Eligibility, CUSIP Number Affixture and Initial Communications. Each underwriter shall carry out the following functions:

(A) through (B) No change.

(C) The underwriter shall communicate information about the new issue in accordance with the requirements of this paragraph (a)(ii)(C) to ensure that other brokers, dealers and municipal securities dealers have timely access to information necessary to report, compare, confirm, and settle transactions in the new issue and to ensure that registered securities clearing agencies receive information necessary to provide comparison, clearance and depository services for the new issue.

~~(C) The underwriter shall as promptly as possible announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.~~

(1) The underwriter shall ensure that the following information is submitted to a new issue information dissemination system in the manner described in the written procedures for system users and that changes to submitted information are made as soon as possible:

~~(1) the CUSIP number or numbers assigned to the issue and descriptive information sufficient to identify the CUSIP number corresponding to each part of the issue assigned a specific CUSIP number; and~~

(a) the Time of Formal Award. For purposes of this paragraph (a)(ii)(C), the "Time of Formal Award" means, for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award.

(b) the Time of First Execution. For purposes of this paragraph (a)(ii)(C), the "Time of First Execution" means the time the underwriter plans to execute its first transactions in the new issue. The underwriter shall designate a Time of First Execution that is no less than two hours after all

information required by paragraph (a)(ii)(C) has been transmitted to the new issue information dissemination system.

(c) All other information identified as required for "Trade Eligibility" in the new issue information dissemination system.

(2) The underwriter shall ensure that all information identified in this paragraph (a)(ii)(C) is provided no later than two hours of the Time of Formal Award. For purposes of this paragraph (a)(ii)(C), the hours counted in determining the responsibilities of an underwriter shall include only the hours of 9:00 A.M. and 5:00 P.M. Eastern Time on an RTRS Business Day as defined in Rule G-14 RTRS Procedures section (d)(ii).

~~(2) the time of formal award. For purposes of this subparagraph (a)(ii)(C), time of formal award shall mean, for competitive issues, the time the issuer announces the award, and, for negotiated issues, the time the contract to purchase the securities from the issuer is executed.~~

(3) The term "new issue information dissemination system" means an automated, electronic system operated by a securities clearing agency registered with the Securities and Exchange Commission providing depository services for municipal securities that receives comprehensive new issue information on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating such information to information vendors supplying formatted municipal securities information for use in automated trade processing systems.

(D) No change.

(iii) No change.

(b) No change.

[1] See "Amendments Approved to Rule G-14 RTRS Procedures Relating to "List Offering Price" and "Takedown" Transactions," MSRB Notice 2006-28 (October 19, 2006).

[2] Rule G-14 transaction reporting procedures provide an end-of-day reporting exception for certain short-term securities. A temporary three-hour reporting deadline for certain when-issued transactions also is available but will sunset at the end of 2007. This is discussed *infra* in footnote 4.

[3] The 15-minute reporting deadline also applies to certain primary market transactions that do not meet the definitions of "List Offering Price" or "RTRS Takedown" transactions, including transactions in securities in "Not Re-Offered" maturities within an issue.

[4] The temporary exception initially was available for trades in which the dealer: (i) did not have the CUSIP number and indicative data of the issue traded in the securities master file used by the dealer to process trades for confirmation, clearance and settlement; (ii) had not traded the security in the previous year; and (iii) did not act as a syndicate manager or syndicate member for the security.

It has subsequently been amended to apply only to when-issued transactions and will completely sunset at the end of 2007.

[5] TBMA has since merged with the Securities Industry Association and is now the Securities Industry and Financial Markets Association ("SIFMA").

[6] See "Notice of Filing of Proposed Rule Change Relating to RTRS Procedures, Under Rule G-14 Reports of Sales or Purchases," MSRB Notice 2006-60 (December 13, 2005). The proposed rule change was approved by the Securities and Exchange Commission on December 16, 2005. See footnote 4 for a description of the exception.

[7] See Letter to Jonathan G. Katz, Secretary, Commission, from Leslie M. Norwood, Vice President and Assistant General Counsel, The Bond Market Association (July 20, 2004).

[8] See "Industry Preparations for Expiration of Three Hour Exception from Real-Time Transaction Reporting," MSRB Notice 2006-12 (April 24, 2006). This notice contains an internet link to information about NIIDS located at DTCC's web site.

[9] RTRS only requires dealers to include limited information on trade reports in when-issued securities, such as the CUSIP number of the security traded, the par value of the transaction, and the transaction price expressed as either yield or dollar price.

[10] Rule G-34 defines "underwriter" very broadly to include a dealer acting as a placement agent as well as any dealer purchasing new issue securities from the issuer as principal. If there is an underwriting syndicate, the lead manager is considered to be the "underwriter" for purposes of Rule G-34.

[11] Under existing provisions of Rule G-34, dealers frequently apply for CUSIP numbers before interest rates are determined. In these cases, the dealer must provide the final interest rate information as soon as it becomes available. The draft amendments would clarify that a dealer must update any of the required information that changes after an initial application as soon as the new information becomes available.

[12] As noted above, in competitive sales where a dealer serves as financial advisor, Rule G-34 requires the dealer to apply for CUSIP numbers. However, in competitive sales where there is no dealer financial advisor, there is no other dealer associated with the issue prior to the date of sale that can be charged with the responsibility to make a pre-sale application for CUSIP numbers.

[13] DTCC's web site includes information on the procedures for submitting information to NIIDS and technical specifications for data submission at:  
<http://www.dtcc.com/reengineering/underwriting/specs.html>

[14] Several industry vendors that provide "bookrunning" services to underwriters on new issues have indicated that they plan to offer a service to transmit information about a new issue to NIIDS on behalf of the underwriter.

[15] DTCC also has stated that information vendors receiving the data will be charged only for communications costs.

[16] The draft revisions to *Specifications for Real-Time Reporting of Municipal Securities Transactions* ([click here to access the draft Specifications](#)) show the values that would be used in the special condition indicator field to indicate a CTC transaction. All dealers, including those outside the underwriting group, would be required to use the CTC indicator. For inter-dealer transactions, the dealer on the sell side of the transaction would be responsible for using the indicator.

[17] See "Confirmation: Mailing of WAI Confirmation," MSRB Rule G-12 Interpretive Letter (April 30, 1982), paragraph 3556.55 MSRB Manual.

[18] MSRB Rule G-34 (a)(ii)(C)(2).

[19] See "Review of Dealer Pricing Responsibilities," MSRB Notice 2004-3 (January 26, 2004).

[20] While complete securities information necessary for a report of a trade execution likely would not be available at the time a CTC report is made, the MSRB could propose that limited information, including the time the CTC was formed, the price, and the CUSIP number, be provided to RTRS. At a minimum, the MSRB's internet portal for reporting transactions, RTRS Web, could be used to manually report CTCs, thus minimizing the amount of dealer system changes needed to advance the timing of reporting CTCs. Once the formal award takes place, dealers would provide the MSRB with details of trade executions, as is currently required, and identify whether any reported CTCs were not executed to ensure that surveillance data is correct.

\* Underlining indicates additions; ~~strikethroughs~~ indicate deletions.