

MSRB NOTICE 2007-10 (MARCH 5, 2007)



[Home Page](#) [Back](#)

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.[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 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.^[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?

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.^[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

* * *

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) (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.