

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

The "ACATS for Banks" proposal appeared in the March 1996 program agenda advisory committee agenda, which is a DTC communication mechanism to present new programs and other issues to DTC customers. The results of comments by DTC participants appeared in the August 1996 program agenda proposals report. Ninety-eight participants responded to the proposal, and more than 70% of those that approved of the proposal through that, of the several possible means of facilitating these account transfers, a link to the NSCC ACATS system was the most desirable approach. Since NSCC had already committed to a wholesale redesign of ACATs, bringing banks into the system was made an integral part of the redesign.

As part of the ACATS redesign, NSCC set up several focus groups, including a group of banks and representatives of bank industry groups, to discuss improvements to ACATS and DTC's role in account transfers. This led to a bank advisory group and, thereafter, to joint NSCC/DTC educational awareness seminars held in various cities around the country during February and March of 1998. All DTC participants were invited, and 16 DTC participants signed up to participate in a pilot. To date, 62 DTC participants have expressed an interest in ACATS.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b) (3) (F).<sup>8</sup> Section 17A(b)(3)(1)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) of the Act. ACATS provides a more efficient method for the transfer of customer assets. The rule change will make the benefits of ACATS available to a number of DTC participants that presently do not have access to ACATS.

DTC has requested that the Commission approve the proposed rule

change subsequent to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change rule change prior to the thirtieth day after the publication of notice because such approval will allow DTC's interface the ACATS to become operative with NSCC's implementation of the newly designed ACATS system. The Commission points out that this proposed rule change was discussed in NSCC's rule filing regarding the new ACATs system to which no written comments were received.<sup>9</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SSR-DTC-98-26 and should be submitted by April 15, 1999.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-98-26) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>9</sup> Securities Exchange Act Release Nos. 40487 (September 28, 1998), 63 FR 53479 and 40657 (November 10, 1998), 63 FR 63952.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34-41192; File No. SR-MSRB-99-2)

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-11, on Sales of New Issue Municipal Securities During the Underwriting Period**

March 19, 1999.

On March 11, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-99-2), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 Board is filing herewith an amendment to Rule G-11, on sales of new issue municipal securities during the underwriting period. The proposed rule change clarifies a previous amendment to Rule G-11(g)(iii) concerning the disclosure of designation information to syndicate members. The following is the text of the proposed rule change, with italics denoting new language and brackets denoting deletions:

**I. Rule G-11. Sales of New Issue Municipal Securities During the Underwriting Period**

(a)-(f) No change.

(g) Designations and Allocations of Securities. The senior syndicate manager shall:

(i)-(ii) No change.

(iii) disclose, *in writing*, to [the] *each* member[s] of the syndicate [, in writing,] all available *information on designations paid to syndicate and non-syndicate members expressed in total dollar amounts* [designation information] to members within 10 business days following the date of sale and all information *about designations paid to syndicate and non-syndicate members expressed in total dollar amounts* with the sending of the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

designation checks pursuant to Rule G-12(k); and

(iv) No change.

(h) No change.

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 27, 1998, the Commission approved amendments to the Board's syndicate practices rules.<sup>3</sup> The amendments revised several areas involving syndicate practices, including: issuer syndicate requirements, allocation of securities, designation information, take-down information and payment of designations.

After the amendments were approved, the Board received several inquiries from dealers concerning the amendment to Rule G-11(g)(iii) that requires the managing underwriter to disclose to syndicate members, in writing, all available designation information to members within 10 business days following the date of sale and all information with the sending of the designation checks pursuant to Rule G-12(k).

Most of the inquiries concerned whether the requirement was to disclose to each syndicate member its own designation information or whether all members were to receive information about all the designations. On December 11, 1998, the Board published a notice on its Web site to clarify that the requirement is that all designation information be disclosed to each syndicate member.

There also have been a number of questions raised about the kind of designation information that managers are required to disclose. Callers asked whether managers should disclose

designations by total dollar amounts, bond amounts or both total dollar amounts and bond amounts. The Board believes the designation information that will be most useful to syndicate members is the total dollar amounts of the designations.

Another question raised by some callers was whether the disclosure of designation information to syndicate members would require disclosure of designations made to anyone other than syndicate members, e.g., selling group members, since it is not uncommon for selling group members to receive designations. These callers were concerned that, without disclosure to syndicate members of the designations made to non-syndicate members, it is obvious when the dollar amounts designated are totaled that the information is not complete. Since the intent of the Board in adopting the amendment to Rule G-11(g)(iii) was to increase the disclosure of designation information, the Board believes the information disclosed should include all designations.

The proposed rule change addresses the questions that have been raised about Rule G-11(g)(iii) by amending the rule language to make clear that all information about designations paid to syndicate and non-syndicate members is to be provided to each syndicate member and that the designation information must be expressed in total dollar amounts.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)<sup>4</sup> of the Act, which provides that the Board's rules shall "be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

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

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

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

Written comments were neither solicited nor received.

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

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

(A) By order approve such proposed rule change, or

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

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549-0609. 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-99-2 and should be submitted by April 15, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 40717 (November 27, 1998), 63 FR 67157 (December 4, 1998).

<sup>4</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>5</sup> 17 CFR 200.30-3(a)(12).