

information about the licensing program. Specifically, we:

- Added ASM section 333.647 to include a reference to the licensing policy in section 333.6, Endorsement of Nonpostal Products, Services, or Business. The reference is to remind employees to refer to and follow the appropriate policy if a company approaches them about manufacturing or distributing merchandise bearing USPS marks.

- Added ASM part 661 to include the responsibilities and authority of the Licensing group.

- Added ASM section 662.1, to describe the requirements of the licensing program as it relates to Postal Service employees making official purchases of merchandise that display a Postal Service trademark, stamp design, or other pictorial or graphic image that the Postal Service owns or uses.

- Added ASM section 662.2 to provide the definition of *officially-licensed merchandise*.

- Included a licensing handbook for Postal Service employees who work in the field [*Licensing: Field Handbook of Frequently Asked Questions (FAQs)*] and a list of the Postal Service's licensees, which will be updated monthly in the Postal Bulletin.

Stanley F. Mires,

Chief Counsel, Legislative.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46318; File No. SR-MSRB-2002-06]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Disclosures in Connection With New Issues

August 6, 2002.

On June 21, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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-2002-06). The proposed rule change relates to disclosures in connection with new issues.

The Commission published the proposed rule change for comment in

the **Federal Register** on July 3, 2002.<sup>3</sup>

The Commission did not receive comment letters relating to the forgoing proposed rule change. This order approves the Board's proposal.

### I. Description of the Proposed Rule Change

To add greater convenience to customers and cost effectiveness to brokers, dealers and municipal securities dealers, the MSRB has determined to amend Rule G-32, on disclosures in connection with new issues. The proposed rule change amends Rule G-32(a) to reference Rule 154, of the Securities Act of 1933 ("Securities Act"), on householding.<sup>4</sup> The amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records, account for the changes to Rule G-32.

Under the Securities Act's Rule 154, a broker-dealer may satisfy its prospectus delivery requirements with respect to two or more investors sharing the same address by sending a single prospectus to that address, subject to certain conditions.<sup>5</sup> The SEC refers to this process as "householding." In adopting Rule 154, the Commission noted that, as a result of increased ownership of securities by individuals through different accounts (e.g., brokerage accounts, individual retirement accounts and custodial accounts for minors), duplicate copies of disclosure documents often were mailed to a single household.<sup>6</sup> The investors do not have to be related. The document may be addressed to the investors as a group (e.g., "Jane Doe and Household" or "The Smith Family") or to each of the investors individually (e.g., "Jane Doe and John Smith"). The address may be a residential, commercial, or electronic address (i.e., it may be a street address, post office box, fax number, or e-mail address).<sup>7</sup> The purpose of Rule 154 is to reduce the number of duplicate disclosure documents delivered to such investors, thereby resulting in greater convenience for investors and cost savings for broker-dealers and issuers.<sup>8</sup>

<sup>3</sup> See Release No. 34-46124 (June 26, 2002), 67 FR 44656.

<sup>4</sup> Rule 154, on delivery of prospectuses to investors at the same address, permits broker-dealers to satisfy their delivery obligations by sending a single document to two or more investors sharing the same address. 17 CFR 230.154.

<sup>5</sup> The Commission has similar requirements under the Act and the Investment Company Act of 1940 with respect to shareholder reports.

<sup>6</sup> See Release No. 33-7912 (October 27, 2000).

<sup>7</sup> An e-mail address may be used if the dealer obtains the investors' written consent for electronic delivery and it is a shared e-mail address.

<sup>8</sup> *Id.*

The broker-dealer must obtain the investors' written consent to the delivery of a single document on behalf of all such investors, or the broker-dealer may rely on "implied consent" if the following conditions are met: (1) The investor has the same last name as the other investors, or the broker-dealer reasonably believes that they are members of the same family; (2) the dealer sends each investor written notice at least 60 days before relying on this provision, and provides each investor with an opportunity to opt out of this method of delivery;<sup>9</sup> (3) the investor does not opt out during the 60-day notice period; and (4) the dealer delivers the documents to a residential street address or a post office box.<sup>10</sup>

For open-end management investment companies (i.e., mutual funds) and dealers that are required to deliver the disclosure documents of such companies, Rule 154(c) requires, at least annually, that the dealer explain to investors who have provided written or implied consent how such consent can be revoked. This information may be provided through any means reasonably designed to reach the investor, such as a prospectus, shareholder report or newsletter. Unlike other issuers, mutual funds typically send investors updated disclosure materials annually, and the ongoing nature of this relationship dictates that investors be informed of their right to revoke consent and begin receiving individual copies of disclosure documents, if they so desire.

MSRB Rule G-32, on disclosures in connection with new issues, generally requires that any dealer selling municipal securities to a customer during the issue's underwriting period must deliver the official statement in final form, if any, to the customer by settlement of the transaction. The MSRB believes that, with respect to this delivery requirement, if two or more customers share the same address, Rule G-32 should allow for the same "householding" process as that contained in Rule 154. In addition, Rule G-32(a)(i)(A) provides that, if a customer participates in a periodic municipal fund security plan or a non-periodic municipal fund security program and has previously received an official statement in final form in connection with such a plan or program,

<sup>9</sup> The dealer must provide either a toll-free number or a pre-addressed, postage paid form.

<sup>10</sup> Rule 154 provides that a dealer can assume that an address is a residential address unless it has information that indicates it is a business address. If the dealer has reason to believe that the address is a multi-unit dwelling, the address must include the investor's unit number. See Rule 154(b)(4) and (d).

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

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

the dealer may sell additional shares or units to that customer if the dealer sends a copy of any new, supplemented, amended or "stickered" official statement in final form, by first class mail or other equally prompt means.<sup>11</sup> Allowing for householding in the context of municipal fund securities would be particularly beneficial, especially where one family has accounts for multiple children (or each parent has separate accounts for the same child) and the dealer may be required to deliver disclosure documents on an ongoing basis (*e.g.*, the customer participates in a periodic plan or non-periodic program).

Thus, the proposed rule change provides that a dealer may satisfy its official statement delivery obligations by complying with that Rule's requirements when sending disclosure documents to two or more customers sharing the same address. The amendment further provides that dealers that are required to send ongoing disclosure documents to customers who participate in a periodic municipal fund security plan or a non-periodic municipal fund security program are specifically required to comply with Rule 154(c) by providing those customers with information, at least annually, on how to revoke their consent to the householding process and thereby receive individual copies of disclosure documents, if they so desire.

## II. Summary of Comments

The Commission did not receive comment letters relating to this proposed rule change.

## III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.<sup>12</sup> The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to,

<sup>11</sup> If the dealer sends a supplement, amendment or sticker without including the remaining portions of the final official statement, the dealer must include a written statement describing which documents constitute the complete final official statement and stating that it is available upon request.

<sup>12</sup> Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

and facilitating transactions in 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.<sup>13</sup>

After careful review, the Commission finds that the Board's proposed rule change consisting of a proposed amendment to Rule G-32, on disclosures in connection with new issues, as well as amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act, as set forth above.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. MSRB-2002-06) be and hereby is, approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46316; File No. SR-NASD-2002-90]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Modification of a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

August 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 1, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities

and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposal with the Commission on August 1, 2002.<sup>3</sup> Nasdaq filed the proposal pursuant to Section 19(b)(3) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to amend its Nasdaq PostData<sup>SM</sup> ("PostData<sup>SM</sup>") pilot program to make the following additional information available through PostData<sup>SM</sup>: (1) Buy volume reports; (2) sell volume reports; (3) crossed volume reports; and (4) consolidated activity volume reports. New text is italicized.

\* \* \* \* \*

### Rule 7010 System Services

(a)-(o) No changes.

(q) NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be \$70 per month. The charge to be paid by market data vendors for this information shall be \$35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers<sup>\*</sup> and data vendors. The Volume and Issue Data package includes: (1) Daily Share Volume reports

<sup>3</sup> See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, dated July 31, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq represented that the proposed modifications to Nasdaq PostData<sup>SM</sup>, a trading data distribution facility, will be made available at no charge to all vendors and direct subscribers of Nasdaq. Nasdaq further represented that it had made information on the proposed modifications available to market data vendors, but that no vendors currently accept the PostData<sup>SM</sup> feed or re-distribute that feed to their subscribers. In addition, Nasdaq requested that the Commission waive both the five-day pre-filing notice requirement and the 30-day operative delay provided under Rule 19b-4(f)(6) of the Act.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>\*</sup> For purposes of this service, see definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

<sup>13</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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

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

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