

solicited or received. FICC will notify the Commission of any written comments received by FICC.

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

Within thirty five 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 ninety 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 the proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2004-15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-FICC-2004-15. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at www.ficc.com. 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-FICC-2004-15 and should be submitted on or before November 26, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4-3006 Filed 11-3-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50605; File No. SR-MSRB-2004-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board To Create Real-Time Transaction Price Service and Propose Annual Subscription Fee

October 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 26, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been 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 has filed with the SEC a proposal to create the Real-Time Transaction Price Service ("Real-Time Service" or "Service") to disseminate municipal securities transaction prices in real-time. An annual fee of \$5,000 is proposed for a subscription to the Service. The Service would be part of

the MSRB's Real-Time Transaction Reporting System, which is planned for implementation in January 2005. The text of the proposal is set forth below.

* * * * *

Real-Time Transaction Price Service

In January 2005, the MSRB plans to begin operation of the Real-Time Transaction Price Service to disseminate municipal securities transaction prices in real-time. The Service will be available by subscription for an annual fee of \$5,000 and will be a part of the MSRB's Real-Time Transaction Reporting System ("RTRS"). RTRS will bring real-time price transparency to the municipal securities market and will make other improvements in the transparency and market surveillance functions of the MSRB's current transaction reporting program.

Description

The Service will be available by subscription and will provide a real-time stream of data representing municipal securities transaction reports made by brokers, dealers and municipal securities dealers ("dealers") to RTRS.³ After receipt of a trade report from a dealer, RTRS will automatically check the report for errors, ensure that it is a valid trade report for dissemination, appropriately format the report, and make it available for immediate electronic transmittal to each subscriber.⁴

The real-time data stream will be in the form of messages and will be available either over the Internet or by leased line, at the subscriber's option.⁵ The subscriber must use either the MQ Series⁶ or a TCP Socket connection for messaging with RTRS. Messages representing trade reports will be sent

³ Modifications and cancellation messages submitted by dealers will also be disseminated in real time.

⁴ The MSRB anticipates that, during peak traffic periods, these automated functions will be accomplished within two minutes, and during lighter periods will be accomplished within a few seconds.

Certain trade reports made by dealers, which are coded by the dealers to indicate that the trade is for a specific reason not done at a market price, will not be disseminated but will be available to regulators as part of the surveillance function offered by RTRS. Certain other types of "transactions" that are required to be reported exclusively for audit trail purposes (relating to clearing brokers and their correspondents in certain fully-disclosed clearing arrangements where the correspondent does not take a principal position) also will not be disseminated but will be available to regulators.

⁵ Subscribers will be responsible for all telecommunications charges for leased lines.

⁶ To receive real-time trade messages via MQ Series, subscribers must license and configure their own MQ software.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

out by the Service based on the order that they are received at RTRS, *i.e.*, on a "first in-first out" basis.⁷ The Service also will offer a "Day Replay" filing containing all messages sent during the day, in case a subscriber needs to check its records for completeness of recovery from communication breaks.⁸

Hours of Operation. The "RTRS Business Day," during which time dealers are required by Rule G-14 to submit trade reports within 15 minutes of execution, begins at 7:30 a.m. and ends at 6:30 p.m.⁹ However, RTRS will actually accept, and the Service will disseminate, any trade reports received between 7 a.m. and 8 p.m. ("RTRS 'Window' Hours").¹⁰ Transaction reports submitted to RTRS after 8 p.m. will not be processed by RTRS but will be pending for processing and dissemination at 7 a.m. the next business day.¹¹

Transaction Data Disseminated. The data contained in each transaction price report sent to subscribers is discussed in detail in the RTRS filing.¹² It will include the same transaction information now disseminated in the MSRB's existing overnight batch system of transaction reporting, with additional data elements that have been added for real-time transaction reporting. The specific items of information that will be disseminated are:

⁷ If a subscriber detects that a message or a series of messages was missed during the day, the subscriber can request a trade message replay or "snapshot."

⁸ The MSRB also maintains a hot-site from which it will provide real-time feed subscribers with a second source for the feed in the event that it can no longer be broadcast from the RTRS primary site.

⁹ All times given are in Eastern Time.

¹⁰ The RTRS "window" hours provide extra time before the Business Day and after the Business Day for dealers that may need to report late trades or correct mistakes that are discovered after the close of the Business Day. The 8 p.m. closing time for the window is intended to allow time for certain kinds of trades that, pursuant to Rule G-14, are permitted to be reported at the "end of day" for operational reasons (*e.g.*, syndicate trades executed at list price). These can be reported up until 8:00 p.m. when the RTRS "window" closes.

¹¹ In addition, at 7 a.m. RTRS will send modifications showing exact par values for transaction that were initially broadcast with a par value of "1MM+." As described in the RTRS filing, because of concerns regarding liquidity, transactions with a par value exceeding \$1 million will initially be disseminated with a par value of "1MM+." Five business days after trade date, the actual par value will be shown.

¹² File No. SR-MSRB-2004-02 (June 1, 2004); *see also* "Real-Time Transaction Reporting: Notice of Filing of Proposed Rule Change to Rules G-14 and G-12(f)," MSRB Notice 2004-13 (June 1, 2004), at www.msrb.org. The SEC approved this filing on August 31, 2004, in Securities Exchange Act Release No. 50294; *see also* "Approval by the SEC of Real-Time Transaction Reporting and Price Dissemination," MSRB Notice 2004-29 (Sept. 2, 2004), at www.msrb.org.

Message Type

Type of message sent in the real-time broadcast (*i.e.*, a trade message, a "heartbeat" message or a system message). Heartbeat messages will be sent once every 60 seconds in the absence of real-time transaction messages to indicate that the connection is working properly but that there are no messages to send. System messages will be sent to indicate the daily open and close of the RTRS real-time subscriber service and to notify subscribers if publishing will be intentionally interrupted during system hours (*e.g.*, the markets have been closed because of extraordinary circumstances).

Sequential Number

Unique sequential number of the trade message. If more than one message has been published for a trade due to modification or cancellation, the trade is uniquely identified by the RTRS ID described below.

RTRS Control Number

The RTRS ID for the transaction. This may be used to apply subsequent modifications and cancellations to an initial transaction.

Trade Type Indicator

Type of trade: An inter-dealer trade, a purchase from a customer by a dealer, or a sale to a customer by a dealer.

Transaction Type Indicator

An indicator showing whether the message is a new transaction, or modifies or cancels a previously disseminated transaction.

CUSIP

The CUSIP number of the issue traded.

Security Description

Text description of the security obtained from the CUSIP Service Bureau.

Dated Date

Dated date of the issue traded obtained from the CUSIP Service Bureau.

Coupon (If Available)

Interest rate of the issue traded (blank for zero-coupon bonds) obtained from the CUSIP Service Bureau.

Maturity Date

Maturity date of the issue traded obtained from the CUSIP Service Bureau.

When-Issued Indicator (If Applicable)

Indicates whether the issue traded on or before the issue's initial settlement date obtained from Standard and Poor's.

Assumed Settlement Date (If Applicable)

For new issues where the initial settlement date is not known at the time of execution, this field is a date 15 business days after trade date. If this field is populated there will be no data in the settlement date field.

Trade Date

The date the trade was executed as reported by the dealer.

Time of Trade

The time of trade execution as reported by the dealer.

Settlement Date (If Known)

The settlement date of the trade if reported by the dealer will be shown. If this field is populated there will be no data in assumed settlement date field.

Par Traded

The par value of the trade as reported by the dealer will be shown. Trades with a par amount over \$1 million will show par value as "1MM+" until five days after the stated trade date.

Dollar Price

The dollar price of the trade will be shown, as reported by the dealer. In most inter-dealer trade reports, the dealer is not required to report a dollar price and the dollar price shown is calculated by the MSRB from the final monies, par value and accrued interest reported for the trade.

Yield (If Applicable)

For customer trades, this field shows the yield of the trade as reported by the dealer. This normally is the same yield that would appear on a confirmation of the trade. For some customer trades (*e.g.*, trades defaulted securities, certain securities with variable interest rates) a yield cannot be reported by the dealer. On inter-dealer trades, yield is not generally reported by the dealer and is not shown.

Broker's Broker Indicator (If Applicable)

An indicator used in inter-dealer transactions that were executed by a broker's broker, including whether it was a purchase or sale by the broker's broker.

Weighted Price Indicator (If Applicable)

An indicator that the transaction price was a "weighted average price" based on multiple transactions done at

different prices earlier in the day to accumulate the par amount needed to execute an order for a customer.

Syndicate Price Indicator (If Applicable)

An indicator showing that the transaction price was reported as a trade in a new issue by a syndicate manager or syndicate member at the list offering price on the first day of trading.

RTRS Broadcast Date

The date the message was published to subscribers.

RTRS Broadcast Time

The time the message was first disseminated to subscribers.

Version Number

Version number of the message or file format used in the message or file.

Subscription Fee

The Real-Time Service will be available by subscription for an annual fee of \$5,000.¹³ Subscribers will be allowed to re-disseminate transaction data to an unlimited number of their own customers or clients at no additional charge. By not charging for or restricting re-distribution of the transaction data, the MSRB wishes to encourage information vendors—and various other entities that make securities data available to members of the securities industry and the public—to use the transaction data in their products and services. The MSRB will also encourage those parties to re-disseminate the data, either in its original form or with enhancements to address the specific needs of specific data users.¹⁴ Through this approach, the MSRB anticipates that it will be possible for a typical individual investor to obtain the transaction data that is relevant to his or her investments for free or at a very modest cost.¹⁵ After its first year of operation, the MSRB will review the usage of the real-time data feed to ensure that this goal is being met and that the data is readily available to

¹³ The \$5,000 subscription price will cover the administrative and technical costs associated with disseminating data and supporting subscription accounts. The MSRB is not attempting to levy revenues from the Service to cover all RTRS costs.

¹⁴ Although the transaction data collected by the MSRB is not restricted with respect to re-dissemination, there are certain restrictions on use of the proprietary "CUSIP numbers and CUSIP Securities Descriptions." These are contained within the Subscription Agreement for the Service.

¹⁵ The MSRB, for example, has received an indication from The Bond Market Association ("BMA") that the real-time data will be made available in real-time on the BMA's free Web site (www.investinginbonds.com) which contains information on the fixed income markets.

municipal market participants and others who need the data.

Other Transparency Reports Under RTRS

In addition to offering the Real-Time Service, RTRS will continue to provide the primary transparency reports that have been developed within the current transaction reporting program. The data fields in these products will be modified for consistency with the real-time transaction data fields noted above and formatted to reflect that the data is being disseminated in files containing multiple transactions, rather than in real-time, "trade by trade," messages.¹⁶

The existing "Trade Detail Report" (also known as the "T+1 Report") contains the trade reports for a specific trade date and is made available at approximately 6:00 a.m. on the business day following trade date ("T+1"). It is provided in the form of an electronic file and is made available over the Internet. After RTRS is operational, the Trade Detail Report will be reformatted and renamed the "T+1 Transaction Price Service." Subscriptions will remain free to any interested person.

The existing "Daily Comprehensive Report" also is used to disseminate trade reports for a specific trade date, but is made available five business days after that trade date ("T+5").¹⁷ In RTRS, this service will be renamed the "Comprehensive Transaction Price Service." The service will be made available exclusively through electronic file download over the Internet in the same format and manner as the T+1 Transaction Price Service. As is the case for the Comprehensive Reports produced today, the trade records in the new comprehensive service will: (i) Include exact par values for those transactions with a par value over \$1 million; (ii) show all late trade reports made after the specified trade date, up until the date of dissemination; and (iii)

¹⁶ Approximately six months after RTRS becomes operational, the MSRB will retire certain redundant reports, and will combine the monthly and daily comprehensive reports into one service.

¹⁷ Subscribers to the T+5 Report also have access to a T+20 Report that contains transactions showing the effects of any modifications received at RTRS since the T+5 Report was produced. Data formats in reports created before RTRS became operational may be those that were in use at the time they were created. Any interested party may contact the MSRB for technical information about these older reports.

The MSRB also currently makes a "Monthly Comprehensive Report" available. Upon SEC approval of File No. SR-MSRB-2004-05 (September 15, 2004), transaction data provided by this service will continue to be made available through the MSRB's proposed Historical Data Product. See also "Notice of Proposed Rule Change to Offer New Historical Data Product," MSRB Notice 2004-30 (Sept. 15, 2004), at www.msrb.org.

show the effect of modifications or cancellations submitted by dealers after trade date. The annual fee for this service will be \$2,000—the same fee currently charged for the existing Comprehensive Reports. Under RTRS, subscribers to the Real-Time Price Dissemination Service will receive a subscription to the Comprehensive Price Data Service at no additional charge.

* * * * *

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 proposal. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On August 31, 2004, the SEC approved a proposed rule change relating to the MSRB's implementation of real-time transaction reporting and price dissemination—the Real-Time Transaction Reporting System or "RTRS."¹⁸ That rule change will become effective in January 2005, at which time the MSRB plans to begin disseminating transaction data electronically in real time. Also at that time, dealers will be required to report transactions in municipal securities within 15 minutes of the time of trade execution (instead of by midnight on trade date, as is currently required).¹⁹

¹⁸ Exchange Act Release No. 50294 (August 31, 2004); see "Approval by the SEC of Real-Time Transaction Reporting and Price Dissemination: Rules G-12(f) and G-14," MSRB Notice 2004-29 (September 2, 2004), at www.msrb.org.

The text of the rule change can be found, along with a description of the RTRS facility, in the MSRB's notice announcing its filing with the SEC. See "Real-Time Transaction Reporting: Notice of Filing of Proposed Rule Change to Rules G-14 and G-12(f)," MSRB Notice 2004-13 (June 1, 2004), at www.msrb.org.

In its RTRS filing, the MSRB indicated that it would file with the SEC the specific implementation date in January 2005 for the beginning of RTRS operations. The MSRB expects to do this in November 2004 when more is known about the progress of dealer certification testing. The RTRS filing included rule amendments that require most dealers to schedule their certification testing prior to October 1, 2004.

¹⁹ The RTRS filing included an amendment to Rule G-14, which will become effective

This is designed to increase price transparency in the municipal securities market and to enhance the surveillance database and audit trail used by enforcement agencies.²⁰ The MSRB is filing this proposed rule change to describe the proposed RTRS service for the dissemination of real-time transaction prices, which is named the Real-Time Transaction Price Service (the "Service"), and the proposed subscription fee for the Service.

The MSRB proposes to charge \$5,000 for an annual subscription to the Service. The MSRB encourages the redistribution of the data obtained through RTRS and believes that achieving the widest possible dissemination of transaction information will help ensure the fairest and most accurate pricing of municipal securities transactions. Toward this end, the MSRB will not impose a charge on subscribers for such redistribution. The MSRB anticipates that information vendors and other entities that make securities data available to the securities industry and the public will subscribe and re-disseminate the data, either in an unmodified form, or with enhancements, for a relatively low cost or for free. After its first year of operation, the MSRB will review the usage of the real-time data feed to ensure that the data is being made available in a cost-effective manner to municipal market participants and others who need the data.

Subscribers will be able to choose one of two telecommunications methods: leased telephone line or Internet. Subscribers will also be permitted to choose one of two means of receiving real-time messages: via a proprietary application program for electronic message transmission called "MQ," or a non-proprietary "TCP Socket" connection. Subscribers will be responsible for the cost of their

concurrently with the operation of RTRS, that will require dealers to report most municipal securities transactions to the MSRB within 15 minutes of the time of trade, rather than by midnight on trade date, as is currently required. For operational reasons, the rule will allow dealers more than 15 minutes to report certain kinds of transactions. These transactions still will be reported to subscribers immediately upon receipt at RTRS.

²⁰The RTRS filing noted that certain trade reports made by dealers, which are coded by the dealers to indicate that the trade is for a specific reason not done at a market price, will not be disseminated but will be available to regulators as part of the surveillance function offered by RTRS. The RTRS Notice also noted that certain other types of "transactions" that are required to be reported exclusively for audit trail purposes (relating to clearing brokers and their correspondents in certain fully-disclosed clearing arrangements where the correspondent does not take a principal position) also will not be disseminated but will be available to regulators.

telecommunication choice and for establishing and maintaining "firewalls" to keep computer systems secure.

The MSRB currently makes several kinds of transaction reports available to the public through its Transaction Report System:²¹

The Inter-Dealer Report has been available since January 23, 1995, and contains summary data about reported inter-dealer transactions for issues that traded four or more times in one day. The data is made available the morning after the transactions are made, and is available at an annual subscription rate of \$15,000.

The Combined Report has been available since August 24, 1998, and contains summary data for reported transactions in issues that traded four or more times in the inter-dealer and the dealer/customer market. The data is made available the morning after the transactions are made, and is available at an annual subscription rate of \$15,000.

The Trade Detail Report became available on January 19, 2000, and contains information on all reported transactions in municipal securities. It is also made available the morning after the transactions were made. This report is available to subscribers free of charge. Data in this report differs from the comprehensive reports described below in that trades in municipal securities over \$1 million in par amount show only "+\$1MM" on the trade detail report, but trades on the comprehensive reports show actual par for all trades.

The Monthly Comprehensive Report has been available since October 25, 2000, and contains information on all transactions in municipal securities. It is available to subscribers for \$2,000 a year on a delayed basis, once a month, covering the preceding month's trading.

The Daily Comprehensive Report has been available since November 1, 2001, and contains daily information on all transactions in municipal securities that occurred one-week prior ("T+5 Report"). It is available to subscribers for \$2,000 a year. This report includes a monthly comprehensive report of transactions done 20 business days prior

²¹ On September 16, 2004, the MSRB filed a proposed rule change with the SEC to offer a new transparency product containing historical trade data obtained through the Transaction Reporting System. Once approved by the SEC, the Historical Data Product would be available at a cost of \$600 for a one-year collection of data on each inter-dealer trade reported since January 24, 1995, and each inter-dealer and customer trade reported since August 25, 1998. See "Notice of Proposed Rule Change to Offer New Historical Data Product," MSRB Notice 2004-30 (Sept. 15, 2004), at www.msrb.org.

("T+20 Report") and shows any modifications received at RTRS since the T+5 Report was produced.

After RTRS becomes operational in January 2005, the MSRB will continue producing these data products and modify them as necessary to reflect new data elements in RTRS trade reports. However, approximately six months thereafter, the MSRB intends to retire the inter-dealer and combined reports, and combine the monthly and daily comprehensive reports into one service.²² The MSRB believes that this transition period should provide ample time for those subscribers who wish to continue receiving the data through the new products to make the minor formatting and other changes necessary to receive such information.²³ In the interim, the MSRB will not accept any new subscribers to these two products. The MSRB believes that the data products that will be available through RTRS will offer more comprehensive and timely information in a more cost-effective manner.²⁴ As noted above, the MSRB will not charge subscribers for the redistribution of data; the MSRB believes that achieving the widest possible dissemination of transaction information will help ensure the fairest and most accurate pricing of municipal securities transactions, and therefore strongly encourages the redistribution of data obtained through RTRS.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,²⁵ which requires that the rules of the MSRB 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

²² There are currently two subscribers to these data products. The MSRB will provide at least six months' written notice to such subscribers, alerting them to the upcoming changes (*i.e.*, discontinuation of these data products) and offering to provide test files from the new system to help such subscribers conduct the necessary reformatting and reprogramming to receive the new data products.

²³ With minor formatting and programming changes, subscribers can actually receive, free of charge, the data currently offered through the inter-dealer and combined reports.

²⁴ Bulk files will be made available to subscribers over the Internet via FTP or on CD-ROM.

²⁵ 15 U.S.C. 78o-4(b)(2)(C).

the public interest * * *²⁶ The MSRB has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. Since 1995, the Board has expanded the scope of its public transparency reports in several steps, and each step has provided industry participants and the public with more information about municipal securities transactions. This process has culminated in the RTRS system. The MSRB also has a long-standing policy of offering low-priced, wholesale information products that are designed to encourage information vendors and other organizations to enhance the data and redistribute it in a format that meets the needs of specific end-users. The MSRB does not intend to operate RTRS for profit, and historically has not attempted to compete with information vendors or other organizations in customizing or enhancing data and marketing products to end-users. This approach has allowed the MSRB to focus on collection of the data rather than on competing with the private sector in packaging and marketing the data. This approach also has allowed the MSRB to keep the costs of its information systems relatively low as part of its objective to maximize the distribution of information, thereby enhancing transparency in the municipal securities market. The MSRB encourages the redistribution of the data obtained through RTRS and believes that achieving the widest possible dissemination of transaction information will help ensure the fairest and most accurate pricing of municipal securities transactions.

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

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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. 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. Please include File Number SR-MSRB-2004-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-MSRB-2004-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-

2004-06 and should be submitted on or before November 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4-3007 Filed 11-3-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50602; File No. SR-NASD-2004-152]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Minor Modifications to the Nasdaq Opening Process for Nasdaq-Listed Stocks

October 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 12, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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

Nasdaq is filing the proposed rule change to modify in four ways the opening process for Nasdaq securities to: (1) Open the trading of Nasdaq stocks that have been the subject of a trading halt using the same process by which it will open trading at 9:30 a.m. for Nasdaq stocks that are not designated to participate in the Opening Cross; (2) amend the last tie-breaker that will be used to determine the price at which the Nasdaq Opening Cross will occur; (3)

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

²⁶ *Id.*