

Executive Order 12333—United States intelligence activities. The discussion will allow the Board to refine its plan of action on this issue.

*Procedures for public observation:*

The meeting is open to the public. Pre-registration is not required. Individuals who plan to attend and require special assistance should contact Executive Director Sharon Bradford Franklin at 202–331–2986, at least 72 hours prior to the meeting date.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Bradford Franklin, Executive Director, 202–331–1986.

Dated: March 24, 2015.

**Lynn Parker Dupree,**

*Acting General Counsel, Privacy and Civil Liberties Oversight Board.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74564; File No. SR–MSRB–2015–02]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to the MSRB Rule G–14 RTRS Procedures, and the Real-Time Transaction Reporting System and Subscription Service

March 23, 2015.

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> notice is hereby given that on March 19, 2015, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “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 filed with the Commission a proposed rule change consisting of proposed amendments to the MSRB Rule G–14 RTRS Procedures, and the Real-Time Transaction Reporting System and subscription service (collectively, the “proposed rule change”). The MSRB is proposing that

the effective date for the proposed rule change be no later than May 23, 2016 and announced by the MSRB in a notice published on the MSRB Web site no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is available on the MSRB’s Web site at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx), at the MSRB’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

MSRB Rule G–14, on reports of sales or purchases, requires brokers, dealers and municipal securities dealers (collectively “dealers”) to report all executed transactions in municipal securities to RTRS within 15 minutes of the time of trade, with limited exceptions.<sup>3</sup> RTRS serves the dual objectives of price transparency and market surveillance. Because a comprehensive database of transactions is needed for the surveillance function of RTRS, Rule G–14, with limited exceptions, requires dealers to report all of their purchase-sale transactions to RTRS, not only those that qualify for public dissemination to serve the transparency function of the system.<sup>4</sup> The MSRB makes transaction data available to the general public through

<sup>3</sup> Transactions in securities without CUSIP numbers, in municipal fund securities, and certain inter-dealer securities movements not eligible for comparison through a clearing agency are the only transactions exempt from the reporting requirements of Rule G–14.

<sup>4</sup> In this respect, RTRS serves as an audit trail for municipal securities trading, with the exception of certain internal movements of securities within dealers that currently are not required to be reported, customer identifications, and other related specific items of information. *Compare Consolidated Audit Trail*, Release No. 34–67457 (July 18, 2012), 77 FR 45722 (August 1, 2012), File No. S7–11–10.

the Electronic Municipal Market Access (“EMMA”) Web site at no cost, and disseminates such data through paid subscription services to market data vendors, institutional market participants and others that subscribe to the data feed.

As more fully described below, the proposed rule change would enhance the post-trade price transparency information provided through RTRS by:

- Expanding the application of the existing list offering price and takedown indicator to cases involving distribution participant dealers and takedown transactions that are not at a discount from the list offering price;
- eliminating the requirement for dealers to report yield on customer trade reports and, instead, enabling the MSRB to calculate and disseminate yield on customer trades;
- establishing a new indicator for customer trades involving non-transaction-based compensation arrangements; and
- establishing a new indicator for alternative trading system (“ATS”) transactions.

##### Expanding the Application of Existing List Offering Price and RTRS Takedown Indicator

Transaction reporting procedures require dealers that are part of the underwriting group for a new issuance of municipal securities to include an indicator on trade reports, which indicator is disseminated to the public, for transactions executed on the first day of trading in a new issue with prices set under an offering agreement for the new issue. These transactions include sales to customers by a sole underwriter, syndicate manager, syndicate member or selling group member at the published list offering price for the security (“List Offering Price Transaction”) or by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published list offering price for the security (“RTRS Takedown Transaction”). Such trade reports are provided an end-of-day exception from Rule G–14’s general 15-minute reporting requirement.

Since the introduction of the List Offering Price Transaction indicator in 2005 and RTRS Takedown Transaction indicator in 2007, certain market practices in this area have evolved. First, outside of traditional underwriting syndicates or selling groups, some dealers have entered into long-term marketing arrangements with other dealers that serve in the syndicate or selling group relating to purchases and re-sales of new issue securities

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

<sup>2</sup> 17 CFR 240.19b–4.

(“distribution participant dealers”). The MSRB understands that these distribution participant dealers agree to execute transactions with customers at the published list offering prices.

Accordingly, the proposed rule change would expand the application of List Offering Price Transaction and RTRS Takedown Transaction indicators to sale transactions by distribution participant dealers to customers at the list offering price and sale transactions by a sole underwriter or syndicate manager to distribution participant dealers.

A second evolution in market practice in this area relates to the prices at which takedown transactions occur. The RTRS Takedown Transaction indicator currently is limited to inter-dealer transactions occurring at a discount from the published list offering price. The MSRB understands that, in some new issues, transactions between a sole underwriter or syndicate manager to a syndicate member, selling group member or distribution participant dealer are not executed at a discount from the published list offering price or at the full takedown amount. This typically occurs in the case of group net or net designated order arrangements. The proposed rule change expands the application of the RTRS Takedown Transaction indicator to any sale transaction by a sole underwriter or syndicate manager to a syndicate member, selling group member or distribution participant dealer on the first day of trading in the new issue.

#### Eliminating the Requirement for Dealers To Report Yield on Customer Trade Reports

Transaction reporting procedures currently require dealers to include on most reports of customer transactions to RTRS both a dollar price and yield.<sup>5</sup> The yield required to be reported to RTRS for customer trades is consistent with the yield required to be displayed on a customer confirmation under Rule G-15(a), which requires that yield be computed to the lower of an “in whole” call or maturity, subject to certain requirements set forth in the rule for specific special situations (generally referred to as the “yield to worst”). Rule G-15(a) requires the confirmation to include the date to which yield is calculated if that date is other than the nominal maturity date, and also requires the confirmation for a transaction effected based on a yield other than yield to worst to include both yields.

<sup>5</sup> For inter-dealer transactions, dealers report the dollar price at which the transaction was effected and the MSRB calculates and includes in disseminated information the corresponding yield.

Since April 30, 2012, the MSRB has calculated and included in disseminated RTRS information the yield on inter-dealer trades computed in the same manner as required for customer trades.<sup>6</sup>

The proposed rule change would eliminate the requirement for dealers to include yield on customer trade reports.<sup>7</sup> Consistent with the manner in which the MSRB calculates and includes in disseminated RTRS information yield on inter-dealer trades, the MSRB would calculate and disseminate yield on customer trade reports.<sup>8</sup> This would remove one aspect of a dealer’s burden in reporting customer transactions to the MSRB in compliance with MSRB Rule G-14<sup>9</sup> and ensure that the calculation and dissemination of yields for both inter-dealer and customer transactions are consistent.

#### Establishing a New Indicator for Customer Trades Involving Non-Transaction-Based Compensation Arrangements

For principal transactions by dealers, the trade price reported to and publicly disseminated by the MSRB includes all aspects of the price, including any mark-up or mark-down that compensates the dealer for executing the transaction. In agency transactions, dealers are required to report to the MSRB both the price of the security and the commission charged to the customer. The prices publicly

disseminated for agency transactions incorporate the reported commission to provide for comparability with the prices for principal trades. However, dealers effecting transactions with customers as part of an arrangement that does not provide for dealer compensation to be paid on a transaction-based basis, such as in certain wrap fee arrangements, report to the MSRB transaction prices that do not include a compensation component.

To distinguish in the transaction information disseminated publicly between customer transactions that do not include a dealer compensation component and those that include a mark-up or mark-down or a commission, the proposed rule change would require dealers to include a new indicator on their trade reports that would be disseminated publicly. This would improve the usefulness of the transaction information disseminated publicly by enabling users of the price transparency information to distinguish those customer transactions that do not include a dealer compensation component.

#### Establishing a New Indicator for ATS Transactions

Dealers may use a variety of means to transact in municipal securities, including broker’s brokers or ATSs as well as traditional direct transactions with a known counterparty. The MSRB currently identifies all transactions reported as having been executed by a broker’s broker in the transaction information disseminated publicly. This identifier is applied based on the broker’s broker informing the MSRB that it acts in such capacity. The MSRB does not currently identify trades as having been executed through an ATS.

To better ascertain the extent to which ATSs are used in the municipal market and to indicate to market participants on disseminated transaction information that an ATS was used, the proposed rule change would establish an additional new indicator. For those ATSs that take a principal position between a buyer and seller, the ATS and the dealers that transact with the ATS would be required to include the ATS indicator on trade reports. In instances where an ATS connects a buyer and seller but does not take a principal or agency position between those parties and therefore does not have a transaction reporting requirement under MSRB rules, the dealers that transact with each other as a result of using the services of the ATS would be required to include the ATS indicator on their trade reports. In all cases, the ATS indicator would be included on transaction information

<sup>6</sup> See “SEC Approves Amendments to MSRB Rule G-14, on Reports of Sales or Purchases, Including Rule G-14 RTRS Procedures, and Amendments to the Real-Time Transaction Reporting System,” MSRB Notice 2012-15 (March 21, 2012).

<sup>7</sup> This change is anticipated to also have the benefit of alleviating particular operational concerns cited by dealers in connection with reporting certain “away from market” trade reports.

<sup>8</sup> Note that dealers would continue to be able to report that a when, as and if issued transaction was executed on the basis of yield in the event that the settlement date is not known at the time the trade is executed, which prevents an accurate calculation of the corresponding dollar price to be performed.

<sup>9</sup> RTRS currently performs price/yield calculations, compares RTRS-computed values to dealer-reported values, and returns errors to dealers when discrepancies are found. This results in dealers researching and responding to such errors which, in many cases, are the results of differences in vendor-provided security descriptive information utilized by dealers and RTRS. By removing the requirement to include yield on customer trade reports, the proposed rule change would have the effect of eliminating these errors. In addition, in the case of transactions arising from customer repurchase agreements, the proposed rule change would eliminate the burden on dealers of calculating for trade reporting purposes a yield consistent with the requirements of Rule G-15(a), which the MSRB understands presents operational challenges given that this represents a different calculation from the calculation used to determine the yield resulting from the terms of the repurchase agreement.

disseminated publicly. Identifying in disseminated transaction information that an ATS was employed should facilitate higher quality research and analysis of market structure by providing information about the extent to which ATSs are used and should complement the existing indicator disseminated for transactions involving a broker's broker.

#### Effective Date of the Proposed Rule Change

To provide time for the MSRB to undertake the programming changes to implement the proposed rule change, as well as to provide an adequate testing period for dealers and subscribers that interface with RTRS, the MSRB is proposing an effective date for the proposed rule change to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than May 23, 2016 and shall be announced no later than sixty (60) days prior to the effective date.

#### 2. Statutory Basis

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

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The MSRB believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market in municipal securities by increasing the quality and usefulness of the post-trade price transparency information provided through RTRS. The MSRB believes the expansion of the application of the existing list offering price and takedown indicator to cases involving distribution participant dealers and takedown transactions that are not at a discount from the list offering price, establishment of a new indicator for customer trades involving non-transaction-based compensation arrangements, and establishment of a new indicator for ATS transactions would enable users of the post-trade price transparency information provided through RTRS to better

understand the pricing of certain transactions as well as how such transactions were executed. As previously noted, identifying in disseminated transaction information that an ATS was employed should facilitate higher quality research and analysis of market structure by providing information about the extent to which ATSs are used and should complement the existing indicator disseminated for transactions involving a broker's broker. Accordingly, the proposed rule change would contribute to the MSRB's continuing efforts to improve market transparency and to protect investors, municipal entities, obligated persons and the public interest.

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

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Information disseminated by RTRS is available to all persons on an equal and non-discriminatory basis. In addition to making the information available for free on the EMMA web portal to all members of the public, the MSRB makes the information collected by RTRS available by subscription on an equal and non-discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such information or otherwise providing value-added services and products to third parties based on such information on terms determined by each subscriber.<sup>10</sup>

The MSRB recognizes that the proposed rule change would impose a burden on dealers and subscribers that interface with RTRS to comply with the reporting and dissemination of the new indicators that would be required by the proposed rule change. The MSRB solicited and received comment on several potential burdens of the proposed rule change and the specific comments and responses thereto are discussed below.<sup>11</sup> The MSRB plans to provide a six month testing period in advance of the effective date. The MSRB believes that a six month testing period in advance of the effective date would provide dealers and subscribers with

sufficient time to make any required changes in due course without causing adverse disruptions to their information technology plans or budgets.

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

On January 17, 2013, the MSRB provided background information on the MSRB's initiative under the Long-Range Plan<sup>12</sup> to refresh the technology of RTRS and sought public comment on the appropriate standard for "real-time" reporting and dissemination of transaction price and related information, as well as on baseline technology, processing and data protocols for post-trade transaction information ("January Release").<sup>13</sup> On July 31, 2013, the MSRB sought public comment on enhancements to data elements disseminated publicly through RTRS ("July Release").<sup>14</sup> Based upon the comments received in response to the January and July Releases, the MSRB identified specific enhancements to RTRS and solicited on August 13, 2014 public input on the specific components of the post-trade reporting and public dissemination enhancements as well as on the likely benefits and burdens associated with the potential enhancements ("August Release").<sup>15</sup> The MSRB received comments on the January Release from fifteen commenters,<sup>16</sup> on the July Release from

<sup>12</sup> See "MSRB Publishes Long-Range Market Transparency Plan," MSRB Notice 2012-06 (February 23, 2012).

<sup>13</sup> See "Request for Comment on More Contemporaneous Trade Price Information Through a New Central Transparency Platform," MSRB Notice 2013-02 (January 17, 2013).

<sup>14</sup> See "Concept Release on Pre-Trade and Post-Trade Pricing Data Dissemination Through a New Central Transparency Platform," MSRB Notice 2013-14 (July 31, 2013).

<sup>15</sup> See "Request for Comment on Enhancements to Post-Trade Transaction Data Dissemination Through a New Central Transparency Platform," MSRB Notice 2014-14 (August 13, 2014).

<sup>16</sup> Comments were received on the January Release from Barclays Capital Inc.: Letter from Scott Coya, Director, Municipal Compliance, dated March 15, 2013 ("Barclays"); Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated March 15, 2013 ("BDA-1"); Charles Schwab & Co. Inc.: Letter from Michael P. Moran, Vice President, Fixed Income Compliance, dated March 15, 2013 ("Schwab"); Eastern Bank: Email from James N. Fox, SVP and Managing Director, dated March 15, 2013 ("Eastern"); Financial Information Forum: Letter from Arsalan Shahid, Program Director, dated March 15, 2013 ("FIF-1"); Financial Services Institute: Letter from David T. Bellaire, Executive Vice President and General Counsel, dated March 15, 2013 ("FSI"); Frost Bank: Letter from Robert N. Jacobs, Assistant Vice President/Compliance Officer, dated March 11, 2013 ("Frost"); Investment Company Institute: Letter from Dorothy Donohue, Deputy General Counsel-Securities Regulation, dated March 15,

<sup>10</sup> The MSRB notes that subscribers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the subscription.

<sup>11</sup> See "Request for Comment on Enhancements to Post-Trade Transaction Data Dissemination Through a New Central Transparency Platform," MSRB Notice 2014-14 (August 31, 2014).

nine commenters,<sup>17</sup> and on the August Release from seven commenters.<sup>18</sup> The portions of these notices relating to the proposed rule change, the comments received in response to such portions, and the MSRB's responses are discussed below.<sup>19</sup>

#### Expanding the Application of Existing List Offering Price and RTRS Takedown Indicators

The July Release solicited input on whether changes to the List Offering Price Transaction and RTRS Takedown Transaction indicators would be warranted given evolutions in market

2013 ("ICI"); J.W. Korth & Company LP: Email from James Korth dated March 14, 2013 ("JKorth"); R.W. Smith & Associates, Inc.: Email from Paige Pierce dated March 20, 2013 ("RWSmith-1"); Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated March 15, 2013 ("SIFMA-1"); Seidel & Shaw, LLC: Letter from Thomas W. Shaw, President, dated March 15, 2013 ("Seidel"); Standish Mellon Asset Management Company LLC: Email from Daniel Rabasco dated March 15, 2013 ("Standish"); TMC Bonds, L.L.C.: Letter from Thomas S. Vales, Chief Executive Officer, dated March 15, 2013 ("TMCBonds"); and Tradition Asiel Securities, Inc.: Letter from Eric M. Earnhardt, Chief Compliance Officer, dated March 19, 2013 ("TASI").

<sup>17</sup> Comments were received on the July Release from Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated November 1, 2013 ("BDA-2"); Corporate Treasury Investment Consulting LLC: Letter from Mark O. Conner, Principal, dated August 16, 2013 ("CTIC"); Financial Information Forum: Letter from Manisha Kimmel, Executive Director, dated November 1, 2013 ("FIF-2"); Interactive Data Corporation: Letter from Mark Hepsworth, President, Interactive Data Pricing and Reference Data, dated November 1, 2013 ("IDC"); Leonard, Jack: Letter dated August 1, 2013 ("Mr. Leonard"); Long, Cate: Email dated November 1, 2013 ("Ms. Long"); Sayer, Steven: Email dated November 3, 2013 ("Mr. Sayer"); Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated November 1, 2013 ("SIFMA-2"); and Wells Fargo Advisors, LLC: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated November 1, 2013 ("Wells Fargo").

<sup>18</sup> Comments were received on the August Release from Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated September 26, 2014 ("BDA-3"); Financial Information Forum: Letter from Darren Wasney, Program Manager, dated September 19, 2014 ("FIF-3"); Income Securities Advisor Inc.: Email from Richard Lehmann dated August 26, 2014 ("ISA"); Murez, Herbert: Email dated August 13, 2014 ("Mr. Murez"); RW Smith & Associates, LLC: Email from Paige W. Pierce, President and Chief Executive Officer, dated September 26, 2014 ("RWSmith-2"); Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated September 25, 2014 ("SIFMA-3"); and Trigo, Loren: Email dated August 13, 2014 ("Trigo").

<sup>19</sup> The January, July and August Releases contemplated additional enhancements to RTRS as well as the establishment of a new program for pre-trade transparency. Comments in response to those items are not addressed in this proposed rule change but would be addressed in any future rulemaking on those items that the MSRB determines to undertake.

practices and the information publicly available through the EMMA Web site. The August Release proposed expanding the application of the List Offering Price Transaction and RTRS Takedown Transaction indicators to include scenarios where: (i) Dealers have entered into long-term marketing arrangements with other dealers that serve in the syndicate or selling group for purchasing and re-selling new issue securities ("distribution participant dealers"); (ii) takedown transactions are not at a discount from the list offering price; and (iii) offerings that occur over a number of days with different list offering prices set each day.

FIF-3 and SIFMA-3 stated support for expanding the application of the List Offering Price Transaction and RTRS Takedown Transaction indicators. With respect to including distribution participant dealers in the definition of which dealers must use the indicator, SIFMA-3 noted that these dealers perform "a similar function to a selling group member." Further, in response to whether takedown transactions that are not at a discount from the list offering price, which would occur in the case of a group net or net designated order arrangement, should be included in the definition of an RTRS Takedown Transaction, FIF-3 and SIFMA-3 indicated support and SIFMA-3 stated that this change "will conform the rule to widespread industry practice" although FIF-3 noted that they "see this happening frequently in the corporate bond market but infrequently in the municipal bond market."

Comments were mixed in response to whether offerings that occur over a number of days with different list offering prices set each day should be included in the List Offering Price Transaction and RTRS Takedown Transaction indicators. FIF-3 offered support for this change and stated that it "agree[s] that if the distribution occurs on days that are not the first day of trading of a new issue, the distribution should still be reported as the list price." SIFMA-3 did not support this change and stated that this "change would be confusing for investors."

After careful consideration of the comments received, and given the absence of evidence of widespread use of offerings occurring over a number of days with different list offering prices set each day, the MSRB has determined not to propose to expand the application of the indicator to address this scenario at this time, although the MSRB may revisit this issue if these types of offerings become more frequent.

#### Eliminating the Requirement for Dealers To Report Yield on Customer Trade Reports

The July and August Releases proposed to eliminate the requirement for dealers to include yield on customer trade reports and, instead, enable the MSRB to calculate and disseminate yield on customer trades. The August Release solicited input on whether this change would alleviate operational concerns cited by dealers in connection with reporting certain "away from market" trade reports.

BDA-3, FIF-2, FIF-3, IDC, SIFMA-2 and SIFMA-3 supported eliminating the requirement to include yield on customer trade reports. Eliminating this requirement would make the MSRB's RTRS yield reporting requirements consistent with those established by Financial Industry Regulatory Authority ("FINRA") for corporate bond transactions and reduce the amount of error feedback returned to dealers when minor discrepancies arise. BDA-3 stated that "MSRB's calculation of yields would avoid differences in yield calculations across dealers due to security master differences" and "[c]ustomers and dealers would also benefit from the improved consistency in the calculation of yield to worst." SIFMA-3 noted that the "elimination of the broker-dealer requirement to report yield on customer trade reports does also alleviate some operational concerns in connection with reporting certain 'away from market' trade reports, such as transactions arising from customer repurchase agreements."

FIF-3, SIFMA-2 and SIFMA-3 cited a concern related to potential differences in the yield calculated by MSRB and displayed on EMMA and the yield calculated by dealers and displayed on customer confirmations. FIF-3 stated that the MSRB should "consider the impact of discrepancies between the MSRB's calculations and dealer-calculated yield to worst which will appear on a customer's confirm" and recommends that the MSRB "[provide] guidance for cases where there are discrepancies between the MSRB's calculations and dealer-calculated yield to worst on a customer's confirm." SIFMA-2 observed that dealers have the responsibility to report yield to customers on trade confirmations and that, due to the complicated nature of some redemption provisions, the dealer-calculated yield and the MSRB-calculated yield may not always match precisely. FIF-2 and IDC suggested that the display of the date to which this

yield-to-worst calculation is determined would be helpful.

After carefully considering commenters' concerns, the MSRB believes potential confusion would be addressed by additionally displaying on EMMA the calculation method (yield to call or maturity) and, for yield to call, the call date and price used. Under this approach, any differences between dealer and MSRB calculations could be understood by viewing the inputs the MSRB used in its calculation.

#### Establishing a New Indicator for Customer Trades Involving Non-Transaction-Based Compensation Arrangements

The July and August Releases proposed the establishment of a new indicator to distinguish in the price transparency data between customer transactions that do not include a dealer compensation component and those that include a mark-up or mark-down or a commission.

BDA-3, FIF-2, FIF-3, Ms. Long, SIFMA-2, SIFMA-3, and Wells Fargo favored the addition of an indicator for identifying transactions that are not inclusive of a compensation component. SIFMA-2, however, opposed requiring the reporting of the details of the non-transaction based compensation arrangement. BDA-3 stated that a new indicator "would provide the users of trade transparency products with information that could explain certain variations in trade prices and assist in best execution determinations." SIFMA-3 suggested that, if the MSRB publicly disseminates the existing agency or principal trade indicator currently collected, this would accomplish the same benefit and also stated that the MSRB should not consider collecting information on the nature of alternative compensation beyond an indicator as such information would be burdensome to report.

The MSRB does not believe that SIFMA-3's suggestion that disseminating the existing agency or principal trade indicator currently collected would help distinguish in the price transparency data customer transactions that do not include a dealer compensation component, particularly because the MSRB understands that both agency and principal transactions can occur under current market practices without a dealer compensation component. With respect to SIFMA-2's view that the MSRB should not consider collecting information on the nature of alternative compensation, the MSRB notes that this was not contemplated in the July or August Release and is not part of the proposed rule change.

#### Establishing a New Indicator for ATS Transactions

The July and August Releases proposed adding an indicator to identify transactions executed using the services of an ATS, which indicator would be included in the information disseminated publicly. The August Release also proposed that, in instances where an ATS does not take a principal position between two dealers, each dealer would be required to report the identity of the ATS employed.

In response to the July Release, Ms. Long supported the addition of an ATS indicator on trades, and stated that the specific ATS used should be identified, initially for surveillance purposes and potentially for future public dissemination. FIF-2 noted operational burdens associated with identifying trades executed using the services of an ATS, particularly in instances where the ATS does not act as the counter-party to the trade. SIFMA-2 questioned the "tangible transparency benefits to the market" of including an ATS indicator. In response to the August Release, SIFMA-3 and FIF-3 noted that this indicator would result in a cost to dealers to implement. SIFMA-3 stated that it "recognizes that the MSRB has a legitimate interest in determining ATS participation in the market, and likely has no other way to get this information on a real-time basis." FIF-3 noted that FINRA is pursuing the establishment of a similar ATS indicator for corporate bond trade reports.

In response to a potential requirement that dealers also would need to identify in some cases the ATS employed, SIFMA-3 and FIF-3 suggested that this component would add operational complexity and compliance costs to the requirement. SIFMA-3 stated that "[a]lthough flagging these trades would be a significant operational and administrative burden, the burden would be minimized for the broker-dealer community if the result was a mere change in an 'M code'" (which is the change that would be made to simply identify that an ATS was employed, exclusive of the ATS's identity). FIF-3 stated in response to the proposed requirement to identify the ATS employed that they "believe this would be challenging to implement."

From a market structure perspective, the MSRB believes that it is important to know the extent to which ATSs are employed for inter-dealer transactions as such information could inform future system development, research and rulemaking initiatives. While also having the identity of the ATS in instances where the ATS does not take

a principal position between two dealers would increase the usefulness of the ATS indicator, the MSRB is sensitive to the burden such a requirement would impose, particularly given the future potential establishment by the MSRB of a pre-trade transparency system. The MSRB notes that under a comprehensive pre-trade transparency system, it is anticipated that the identity of each ATS would be known and the extent to which each is used in the municipal market would therefore be quantifiable. Accordingly, the MSRB believes that proceeding with the establishment of an ATS indicator, which the MSRB plans to implement utilizing the existing special condition indicator (the "M code") field in RTRS, is appropriate. The MSRB, however, in acknowledgement of the burdens identified by commenters, has not included in this proposed rule change a requirement to report the identity of the ATS that was used.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate 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 or disapprove 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2015-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2015-02. This file number should be included on the

subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2015-02 and should be submitted on or before April 17, 2015.

For the Commission, pursuant to delegated authority,<sup>20</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74563; File No. SR-ICC-2015-004]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to Physical Settlement of CDS Contracts

March 23, 2015.

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> notice is hereby given that on March 11, 2015, ICE Clear Credit LLC ("ICC" or the "clearinghouse") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared

primarily by ICC. 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 purpose of the proposed rule change is to amend ICC rules to modify the terms and conditions for physical settlement of cleared CDS Contracts, and to adopt certain new delivery procedures relating to physical settlement.

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

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

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

ICC submits proposed amendments to the ICC Clearing Rules ("ICC Rules") relating to physical settlement of CDS Contracts. Upon the occurrence of a credit event under a cleared CDS Contract, the contract is typically settled in cash in accordance with the terms of the ICC Rules, which incorporate the applicable ISDA Credit Derivatives Definitions (the "ISDA Definitions") and the market-standard credit default swap auction methodology for determining the cash settlement price. However, in certain circumstances, such as where the Credit Derivatives Determinations Committee decides not to hold a cash settlement auction for a particular credit event, or such an auction is cancelled under the terms of the auction methodology (including because of a failure to determine the auction settlement price), the CDS Contracts provide for a fallback settlement method of physical settlement. Under physical settlement of a CDS contract generally, the protection buyer will be entitled to deliver one or more qualifying deliverable obligations to the protection seller, in which case the protection seller will be required to pay the protection buyer a defined physical settlement amount. Under the current ICC Rules, if physical settlement

applies,<sup>3</sup> the clearinghouse will match clearing participants ("Participants") that are protection buyers with Participants that are protection sellers in the relevant contract, and the two Participants will be responsible for effecting physical settlement between them. ICC does not itself perform or guarantee performance of physical settlement between the matched Participants. Once matching occurs, the contract is purely a bilateral contract between the matched Participants, and the clearinghouse has no further rights or obligations with respect to the contract. ICC does, however, collect and hold physical settlement margin as collateral agent on behalf of the protection buyer to secure the protection seller's obligations to the protection buyer under physical settlement.

At the request of its Participants, and following extensive consultation with them, ICC proposes to amend the ICC Rules relating to physical settlement such that the clearinghouse will be responsible for financial performance of physical settlement. ICC understands that Participants and other market participants view the current approach, in which cash settlement of credit events is guaranteed by the clearinghouse but physical settlement is not, as creating a potentially anomalous result in the unlikely case that physical settlement may apply. The application of physical settlement would be a circumstance that is generally not within any Participant's control, and under the current rules may expose Participants to a significantly different credit risk profile than under cash settlement (where the Participant is exposed to the credit of the clearinghouse). In light of these discussions, ICC has determined that it is appropriate to extend the clearing guarantee to the financial performance of physical settlement. ICC notes that under the amended approach, it would still require payments and deliveries in the ordinary course under physical settlement to be made directly between the matched buying Participant and selling Participant, with the clearinghouse only being obligated to make direct payments in the case of certain defined settlement failure scenarios. ICC believes that this proposed rule change will further the general policy goals of central clearing for CDS transactions, and is consistent with the clearinghouse's financial

<sup>3</sup> ICC notes that to date, physical settlement has not been necessary for any of the CDS Contracts cleared by ICC.

<sup>20</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.