Company name	Country	File No.
Tsingtao Brewery Company Ltd	China	82–4021
Tullow Oil plc	United Kingdom	82–5202
Tyumen Air Company	Russia	82–4789
UJF Holdings Inc	Japan	82–5169
Unaxis AG	Switzerland	82–34643
UNI President Enterprises Co	Taiwan	82–3424
Union Miniere S.A	Belgium	82–3876
United Bank for Africa plc	Nigeria	82–4804
United Media Ltd	Canada	82–3859
USA Video Interactive Corp	Canada	82–1601
Usinas Siderurgicas de Minas Gerais S.A	Brazil	82–3902
Valeo S.A	France	82–3668
Valerie Gold Resources Ltd	Canada	82–3339
Vanguard Oil Corp	Canada	82–5148
Vedior N.V	Netherlands	82–4654
Velcro Industries. N.V	Neth. Ant.	82–145
Venfin Ltd	South Africa	82–3760
Veos plc	United Kingdom	82–5220
Viceroy Resource Corp	Canada	82–1193
Viktor Lenac Shipyard D.D. Rijeka	Croatia	82–5219
Village Roadshow Ltd	Australia	82–4513
Vinci	France	82–4781
Virotec International Ltd	Australia	82–5090
Vodafone Telecel Comunicacoe Pessoais S.A	Portugal	82–4528
Vodatel Networks Holdings Ltd	Bermuda	82–5146
Voyager Financial News.com	United Kingdom	82–5141
Voyagerit.com plc	United Kingdom	82–5140
VRX Worldwide Inc	Canada	82–4669
Vtech Holdings Ltd	Bermuda	82–3565
Walmart de Mexico S.A. de C.V	Mexico	82–4609
Wanadoo	France	82–5150
Western Pinnacle Mining Ltd	Canada	82–2418
Westone Ventures Inc	Canada	82–4890
Wienerberger Baustoffindustrie AG	Austria	82–4316
Windarra Minerals Ltd	Canada	82–561
Wing Tai Holdings Ltd	Singapore	82–4632
Woodside Petroleum Ltd	Australia	82–2280
Wrightson Ltd	New Zealand	82–3646
X-Cal Resources Ltd	Canada	82–1655
Yaroslavsky OJS Company of Energy & Electric	Russia	82–5144
Yeebo International Holdings Ltd	Bermuda	82–3869
Zero Hora-Editora Jornalistica S.A	Brazil	82–4337
Zhejiang Expressway Co. Ltd	China	82–34629
Zhejiang Southeast Electric Power Co. Ltd	China	82–34633

[FR Doc. 02–11230 Filed 5–6–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45849; File No. SR–MSRB–2002–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Transactions With Sophisticated Municipal Market Professionals

April 30, 2002.

On January 25, 2002, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b-4 thereunder,[2] the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change relating to transactions with sophisticated municipal market professionals.

The Commission published the proposed rule change for comment in the **Federal Register** on February 12, 2002.[3] The Commission received four comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The MSRB's proposed rule change provides an interpretation of the duties under Rules G–13, G–17, G–18, and G–19[4] with regard to transactions involving sophisticated municipal market professionals. The MSRB proposed this rule change because it believes that dealers may consider the nature of the institutional customer in determining what specific actions are necessary to meet the fair practice standards for a particular transaction. The MSRB's proposal concerns only the manner in which a dealer determines that it has met certain of its fair practice obligations to certain institutional customers; it does not alter the basic duty to deal fairly, which applies to all transactions and all customers.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Release No. 34–45364 (January 30, 2002), 67 FR 6294.

[4] The general rules are as follows: Rule G–13, Quotations Relating to Municipal Securities; Rule G–17, Conduct of Municipal Securities Activities; Rule G–18, Execution of Transactions; and Rule G–19, Suitability of Recommendations and Transactions; Discretionary Accounts.

[5] The proposed rule change describes institutional customer as ''an entity, other than a natural person (corporation, partnership, trust, or otherwise), with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management.'' *See*

Continued

In the proposed rule change notice, the MSRB clarified the definition of sophisticated municipal market professional (''SMMP''). Not all institutional customers are sophisticated regarding investments in municipal securities. There are three important considerations with respect to the nature of an institutional customer in determining the scope of a dealer's fair practice obligations. When a dealer has reasonable grounds for concluding that an institutional customer (i) has timely access to the publicly available material facts concerning a municipal securities transaction;[6] (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue;[7] and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion,[8] the institutional customer can be considered an SMMP.[9] While the scope of a dealer's fair practice obligations depends on the particular transaction, by making a reasonable determination that an institutional customer is an SMMP, certain of the dealer's fair practice obligations remain applicable but are deemed fulfilled. In addition, as discussed below, the fact that a quotation is made by an SMMP would have an impact on how such quotation is treated under rule G–13.

Application of SMMP Concept to Rule G–17's Affirmative Disclosure Obligations

As it applies to rule G–17, the SMMP concept recognizes that the actions of a dealer, in compliance with affirmative disclosure obligations under rule G–17, when effecting non-recommended secondary market transactions may depend on the nature of the customer. When a dealer has reasonable grounds for concluding that the institutional customer is an SMMP, the institutional customer, by definition, is already aware, or capable of making itself aware of, material facts and is able to independently understand the significance of the material facts available from established industry sources.[10] When the dealer has reasonable grounds for concluding that the customer is an SMMP then the dealer's obligation when effecting non-recommended secondary market transactions to ensure disclosure of material information available from established industry sources is fulfilled. There may be times when an SMMP is not satisfied that the information available from established industry sources is sufficient to allow it to make an informed investment decision. In those circumstances, the MSRB believes that an SMMP can recognize that risk and take appropriate action, be it declining to transact, undertaking additional investigation or asking the dealer to undertake additional investigation.

This interpretation does nothing to alter a dealer's duty not to engage in deceptive, dishonest, or unfair practices under rule G–17 or under the federal securities laws. In essence, a dealer's disclosure obligations to SMMPs when effecting non-recommended secondary market transactions would be on par with inter-dealer disclosure obligations. This interpretation will be particularly relevant to dealers operating electronic trading platforms, although it will also apply to dealers who act as order takers over the phone or in-person.[11] This interpretation recognizes that there is no need for a dealer in a non-recommended secondary market transaction to disclose material facts available from established industry sources to an SMMP customer that already has access to the established industry sources.[12]

As in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, where the information is not accessible through established industry sources, may constitute an unfair practice violative of rule G–17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.

Application of SMMP Concept to Rule G–18 Interpretation—Duty to Ensure That Agency Transactions Are Effected at Fair and Reasonable Prices

Rule G–18 requires that each dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.[13] The

Release No. 34–45364 (January 30, 2002), 67 FR 6294.

[6] A determination of ''timely access to the publicly available material facts'' will depend on the customer's resources and the customer's ready access to established industry sources for disseminated material information. Considerations include, but are not limited to, the following: resources available to the institutional customer to investigate the transaction; the institutional customer's independent access to the NRMSIR system and the MSRB's MSIL system; and the institutional customer's access to other sources of information concerning material finance developments. *See id.*

[7] To determine if an institutional customer is ''capable of independently evaluating the investment risk and market value'' depend on examination of that customer's ability to make its own investment decisions. Relevant considerations include, but are not limited to, the following: the use of one or more consultants, investment advisers, research analysts or bank trust departments; the general level of municipal securities market expertise of the institutional customer and expertise in the municipal securities under consideration; the institutional customer's ability to understand economic features of municipal securities; the institutional customer's ability to independently evaluate how market developments affect the municipal security under consideration; and the complexity of the municipal securities involved. *See id.*

[8] ''Independent investment decisions'' depend on the institutional customer's own thorough independent assessment of opportunities and risks presented by the potential investment, market forces, etc. Relevant considerations include, but are not limited to, the following: Any written or oral understanding that exists between the dealer and the institutional customer regarding the nature of the relationship and services between the dealer and the customer; the presence or absence of a pattern of acceptance of the dealer's recommendations; the use by the institutional customer of ideas, suggestions, market views and information obtained from sources other than the dealer; the extent to which whether the dealer has received from the institutional customer current comprehensive portfolio information in connection with municipal securities transactions. *See id.*

[9] Dealers are advised that they have the option of having investors attest to SMMP status as a means of streamlining the dealers' process for determining that the customer is an SMMP. However, a dealer would not be able to rely upon a customer's SMMP attestation if the dealer knows or has reason to know that an investor lacks sophistication concerning a municipal securities transaction.

[10] The MSRB filed a related notice regarding the disclosure of material facts under rule G–17 concurrently with this filing. See File No. SR-MSRB–2002–01. The MSRB's rule G–17 notice provides that a dealer would be responsible for disclosing to a customer any material fact concerning a municipal security transaction (regardless of whether such transaction had been recommended by the dealer) made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in municipal securities (collectively, ''established industry sources'').

[11] For example, if an SMMP reviewed an offering of municipal securities on an electronic platform that limited transaction capabilities to broker-dealers and then called up a dealer and asked the dealer to place a bid on such offering at a particular price, the interpretation would apply because the dealer would be acting merely as an order taker effecting a non-recommended secondary market transaction for the SMMP.

[12] In order to meet the definition of an SMMP an institutional customer must, at least, have access to established industry sources.

[13] This guidance only applies to the actions necessary for a dealer to ensure that its agency transactions are effected at fair and reasonable prices. If a dealer engages in principal transactions with an SMMP, rule G–30(a) applies and the dealer is responsible for a transaction-by-transaction review to ensure that it is charging a fair and reasonable price. In addition, rule G–30(b) applies to the commission or service charges that a dealer operating an electronic trading system may charge to effect the agency transactions that take place on its system.

actions that a dealer must take to make reasonable efforts to ensure that its non-recommended secondary market agency transactions with customers are effected at fair and reasonable prices may be influenced by the nature of the customer as well as by the services explicitly offered by the dealer.

If a dealer effects non-recommended secondary market agency transactions for SMMPs and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the dealer is not required to take further actions on individual transactions to ensure that its agency transactions are effected at fair and reasonable prices.[14] By making the determination that the customer is an SMMP, the dealer necessarily concludes that the customer has met the requisite high thresholds regarding timely access to information, capability of evaluating risks and market values, and undertaking of independent investment decisions that would help ensure the institutional customer's ability to evaluate whether a transaction's price is fair and reasonable.

This interpretation will be particularly relevant to dealers operating alternative trading systems in which participation is limited to dealers and SMMPs. It clarifies that in such systems rule G–18 does not impose an obligation upon the dealer operating such a system to investigate each individual transaction price to determine its relationship to the market. The MSRB recognizes that dealers operating such systems may be merely aggregating the buy and sell interest of other dealers or SMMPs. This function may provide efficiencies to the market. Requiring the system operator to evaluate each transaction effected on its system may reduce or eliminate the desired efficiencies. Even though this interpretation eliminates a duty to evaluate each transaction, a dealer operating such system, under the general duty set forth in rule G–18, must act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer may be subject to rule G–18 violations if it fails to take actions to address system or participant pricing abuses.

If a dealer effects agency transactions for customers who are not SMMPs, or has held itself out to do more than provide anonymity, communication, matching and/or clearance services, or performs such services with discretion as to how and when the transaction is executed, it will be required to establish that it exercised reasonable efforts to ensure that its agency transactions with customers are effected at fair and reasonable prices.

Application of SMMP Concept to Rule G–19 Interpretation—Suitability of Recommendations and Transactions

The MSRB's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Dealers' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Dealers are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer. Rule G–19, on suitability of recommendations and transactions, requires that, in recommending to a customer any municipal security transaction, a dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer based upon information available from the issuer of the security or otherwise and based upon the facts disclosed by the customer or otherwise known about the customer.

This guidance concerns only the manner in which a dealer determines that a recommendation is suitable for a particular institutional customer. The manner in which a dealer fulfills this suitability obligation will vary depending on the nature of the customer and the specific transaction. Accordingly, this interpretation deals only with guidance regarding how a dealer will fulfill such ''customer-specific suitability obligations'' under rule G–19. This interpretation does not address the obligation related to suitability that requires that a dealer have a ''reasonable basis'' to believe that the recommendation could be suitable for at least some customers. In the case of a recommended transaction, a dealer may, depending upon the facts and circumstances, be obligated to undertake a more comprehensive review or investigation in order to meet its obligation under rule G–19 to have a ''reasonable basis'' to believe that the recommendation could be suitable for at least some customers. [15]

The manner in which a dealer fulfills its ''customer-specific suitability obligations'' will vary depending on the nature of the customer and the specific transaction. While it is difficult to define in advance the scope of a dealer's suitability obligation with respect to a specific institutional customer transaction recommended by a dealer, the MSRB has identified the factors that define an SMMP as factors that may be relevant when considering compliance with rule G–19. Where the dealer has reasonable grounds for concluding that an institutional customer is an SMMP, then a dealer's obligation to determine that a recommendation is suitable for that particular customer is fulfilled.

This interpretation does not address the facts and circumstances that go into determining whether an electronic communication does or does not constitute a customer-specific ''recommendation.''

Application of SMMP Concept to Rule G–13, on Quotations

New electronic trading systems provide a variety of avenues for disseminating quotations among both dealers and customers. In general, except as described below, any quotation disseminated by a dealer is presumed to be a quotation made by such dealer. In addition, any ''quotation'' of a non-dealer (e.g., an investor) relating to municipal securities that is disseminated by a dealer is presumed, except as described below, to be a quotation made by such dealer.[16] The dealer is affirmatively responsible in either case for ensuring compliance with the bona fide and fair market value

[14] Similarly, the MSRB believes the same limited agency functions can be undertaken by a broker's broker toward other dealers. For example, if a broker's broker effects agency transactions for other dealers and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the broker's broker is not required to take further actions on individual transactions to ensure that its agency transactions with other dealers are effected at fair and reasonable prices.

[15] *See e.g.*, Rule G–19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985, MSRB Rule Book (July 1, 2001) at 135; In re F.J. Kaufman and Company of Virginia, 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989). In a 1988 Release, the Commission's discussion of municipal underwriters' responsibilities noted that ''a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation.'' Municipal Securities Disclosure, Release No. 34–26100 (September 22, 1988) (the ''1988 SEC Release'') at text accompanying note 72.

[16] A customer's bid for, offer of, or request for bid or offer is included within the meaning of a ''quotation' if it is disseminated by a dealer.

requirements with respect to such quotation.

However, if a dealer disseminates a quotation that is actually made by another dealer and the quotation is labeled as such, then the quotation is presumed to be a quotation made by such other dealer and not by the disseminating dealer. Furthermore, if an SMMP makes a ''quotation'' and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer; rather, the dealer is held to the same standard as if it were disseminating a quotation made by another dealer.[17] In either case, the disseminating dealer's responsibility with respect to such quotation is reduced. Under these circumstances, the disseminating dealer must have no reason to believe that either: (i) The quotation does not represent a bona fide bid for, or offer of, municipal securities by the maker of the quotation or (ii) the price stated in the quotation is not based on the best judgment of the maker of the quotation of the fair market value of the securities.

While rule G–13 does not impose an affirmative duty on the dealer disseminating quotations made by other dealers or SMMPs to investigate or determine the market value or bona fide nature of each such quotation, it does require that the disseminating dealer take into account any information it receives regarding the nature of the quotations it disseminates. Based on this information, such a dealer must have no reason to believe that these quotations fail to meet either the bona fide or the fair market value requirement and it must take action to address such problems brought to its attention. Reasons for believing there are problems could include, among other things, (i) complaints received from dealers and investors seeking to execute against such quotations, (ii) a pattern of a dealer or SMMP failing to update, confirm or withdraw its outstanding quotations so as to raise an inference that such quotations may be stale or invalid, or (iii) a pattern of a dealer or SMMP effecting transactions at prices that depart materially from the price listed in the quotations in a manner that consistently is favorable to the party making the quotation.[18]

In a prior MSRB interpretation stating that stale or invalid quotations published in a daily or other listing must be withdrawn or updated in the next publication, the MSRB did not consider the situation where quotations are disseminated electronically on a continuous basis.[19] In such case, the MSRB believes that the bona fide requirement obligates a dealer to withdraw or update a stale or invalid quotation promptly enough to prevent a quotation from becoming misleading as to the dealer's willingness to buy or sell at the stated price. In addition, although not required under the rule, the MSRB believes that posting the time and date of the most recent update of a quotation can be a positive factor in determining whether the dealer has taken steps to ensure that a quotation it disseminates is not stale or misleading.

II. Summary of Comments

The Commission received five letters for comment on the proposal.[20] Of the five letters received, one expressed support[21] for the proposed rule change and the other four expressed concerns with the current form of the proposal.[22]

The comment letter received from TBMA stated that it ''strongly supported'' the MSRB's embrace of the sophisticated municipal market professional concept.[23] In their comment letter, the TBMA asserted that the MSRB's proposed rule change would advance the benefits resulting from on-line municipal security trading platforms. TBMA foresees that this proposal will allow trading platforms to ''simplify their regulatory obligations, cut costs, and improve their ability to compete''.[24] In addition, TBMA expressed its expectation the sophisticated municipal market professional concept will benefit all investors ''by improved liquidity and transparency throughout the municipal market.''[25]

The four letters opposing the MSRB's proposed rule change stated various customer protection concerns. Opponents foresee a reduction in a dealer's fair dealing standard resulting from this proposal. Collectively, these comment letters expressed trepidation with unintended consequences from the proposal in its current form.

The letter from ICI initially favors the concept of reducing certain obligations with transactions involving sophisticated municipal market professionals; however, the ICI does not favor the proposal's current draft form. The ICI states that it is ''disappointed that the MSRB did not accept our recommendations and revise its interpretive notice accordingly.''[26] Specifically, ICI requested that the MSRB make the following revisions: (1) Limit to the proposal's applicability to electronic trading platforms; and (2) exclude from the sophisticated municipal market professional safe harbor certain securities that are exempt from continuing disclosure requirements of the Exchange Act's Rule 15c2–12.[27] Without the inclusion of their request, ICI urges the MSRB to closely monitor the proposal's impact, if any, on the dissemination of secondary market disclosure.[28]

The letter from Fidelity presented a concern of an ensuing compromise of customer protections within the institutional market.[29] In reference to its agreement with ICI's position, Fidelity requested that the MSRB revise its proposal to: (1) limit the proposal's applicability to electronic trading platforms; and (2) exclude from the sophisticated municipal market professional safe harbor certain securities that are exempt from continuing disclosure requirements of the Exchange Act's Rule 15c2–12.[30] Additionally, Fidelity added emphasis to a commitment of protecting mutual fund and money market fund investors.

[17] The disseminating dealer need not identify by name the maker of the quotation, but only that such quotation was made by another dealer or an SMMP, as appropriate.

[18] The MSRB believes that, consistent with its view previously expressed with respect to ''bait-and-switch'' advertisements, a dealer that includes a price in its quotation that is designed as a mechanism to attract potential customers interested in the quoted security for the primary purpose of drawing such potential customers into a negotiation on that or another security, where the quoting dealer has no intention at the time it makes the quotation of executing a transaction in such security at that price, could be a violation of rule G–17. *See* Rule G–21 Interpretive Letter—Disclosure Obligations, MSRB Interpretation of May 21, 1998, MSRB Rule Book (July 1, 2001) at p. 139.

[19] *See* Rule G–13 Interpretation, Notice of Interpretation of Rule G–13 on Published Quotations, April 21, 1988, MSRB Rule Book (July 1, 2001) at 91.

[20] *See* letter from Lynnette Kelly Hotchkiss, Senior Vice President and Associate General Counsel, The Bond Market Association (''TBMA''), to Mr. Jonathan Katz, Secretary, Commission, dated March 1, 2002; letter from James C. White, Senior Vice President, Schwab Capital Markets, Charles Schwab (''Schwab''), to Jonathan G. Katz, Secretary, Commission, dated March 4, 2002; letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute (''ICI''), to Mr. Jonathan G. Katz, Secretary, Commission, dated March 4, 2002; letter from Stanley N. Griffith, Vice President/Associate General Counsel, Fidelity Management & Research Co., Fidelity Investments (''Fidelity''), to Jonathan G. Katz, Secretary, Commission, dated March 13, 2002; letter from Ian MacKinnon, Managing Director, The Vanguard Group (''Vanguard''), to Jonathan G. Katz, Commission, dated March 25, 2002.

[21] *See* letter from TMBA, note 20, *supra*.

[22] *See* letters from Schwab, ICI, and Fidelity, note 20, *supra*.

[23] *See* letter from TBMA, note 20, *supra*.

[24] [24]*Id.*

[25] [25]*Id.*

[26] *See* letter from ICI, note 20, *supra*.

[27] *Id.*

[28] *Id.*

[29] *See* letter from Fidelity, note 20, *supra*.

[30] *Id.*

Fidelity asserted that reducing a dealer's role in disseminating secondary market disclosure ''runs completely counter to the policy underpinnings of the investor protection provisions of the Investment Company Act of 1940 * * * including preserving liquidity * * * and providing adequate information''.[31]

Similar to Fidelity's letters asserting concerns with the proposal's negative impact on municipal mutual funds and money market funds, Vanguard cites the interpretation's appearance of eliminating a dealer's obligation to make suitability determinations.[32] To avoid dilution of disclosure information, Vanguard recommends that the MSRB insert a carve-out for Rule G–19. According to the letter, Vanguard's opinion is that the MSRB has not demonstrated a commensurate benefit to be gained by reducing obligations for SMMPs and thus, should not affect a change that may ''exacerbate the problems caused by the limited disclosure regime for municipal securities''.[33] Vanguard stated that it recognizes that mutual funds and money market fund have their own regulatory compliance responsibilities, nevertheless, Vanguard sees cooperation of dealers as critical investor protection.

The comment letter from Schwab focused on interests of its retail customers. The letter expressed Schwab's agreement in the tremendous benefits the growth of on-line trading brings to the fixed-income marketplace. However, Schwab questioned the encouragement of growth in a ''professionals-only'' platform.[34] In its letter, Schwab stated that its ''principal objection'' to the proposal is the proposal's failure ''to adequately acknowledge and protect the retail investor's right to fully participate in the growing electronic marketplace''.[35] Schwab expressed fear that the proposed rule change will create a two-tiered market in fixed income securities and deny retail investors access to the best market prices.[36]

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 Exchange Act, the rules and regulations thereunder, which govern the MSRB.[37] The language of Section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must 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, settling, processing information with respect to, and facilitiating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.[38]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an interpretation of transactions with sophisticated municipal market professionals meets this standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act, set forth above.

IV. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[39] that the proposed rule change (File No. SR-MSRB–2002–02) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–11231 Filed 5–6–02; 8:45 am]

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[31] *Id.*

[32] *See* letter from Vanguard, note 20, *supra.*

[33] *Id.*

[34] *See* letter from Schwab, note 20, *supra.*

[35] *Id.*

[36] *Id.*

[37] 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).

[38] 15 U.S.C. 78o–4(b)(2)(c).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to the address listed above.

1. Letter to Landlord Requesting Rental Information—0960–0454. Form SSA–L5061 is used by SSA to provide a nationally uniform vehicle for collecting information from landlords in making a rental subsidy determination in the Supplemental Security Income (SSI) Program. The information is used in deciding whether income limits are met for SSI eligibility. The respondents are landlords who provide subsidized rental arrangements to SSI applicants and recipients.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 8,167.

2. Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516. SSA is required by law to establish procedures for collecting information on whether an SSI recipient who becomes institutionalized (e.g., hospital, nursing home) may be eligible for continued benefits, based on the full federal benefit rate, if a physician certifies that he expects the period of medical confinement will last no more than 90 days. The individual (or someone acting on his behalf) must demonstrate that he needs to pay some or all of the expenses of maintaining the home to which he expects to return. The respondents are applicants for SSI benefits.

Number of Respondents: 60,000.

Frequency of Response: 1.