

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (<http://www.claymore.com>), as applicable.<sup>10</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> in that it is 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to consider qualifying Units for listing and trading pursuant to Rule 19b-4(e) under the Act. Commentary .01(a)(A) of Rule 5.2(j)(3) sets forth the generic listing requirements applicable to Units based on U.S. indexes or portfolios.<sup>13</sup> These generic listing standards are designed to ensure that the securities composing the indexes and portfolios underlying the Units are well capitalized and actively

traded, and serve to prevent fraudulent and manipulative acts.<sup>14</sup> As discussed above, the Shares do not qualify for generic listing under the Exchange's rule because the Index does not meet the criteria set forth in Commentaries .01(a)(A)(1) and .01(a)(A)(5) of NYSE Arca Equities Rule 5.2(j)(3) applicable to Units based on U.S. indexes or portfolios.<sup>15</sup>

The Commission believes that the listing and trading of the Shares is consistent with the Act. The Shares currently satisfy all but two of the generic listing standards under the rule, and the Commission believes that the composition of the Index, despite failing to satisfy the requirements of Commentaries .01(a)(A)(1) and .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), does not raise any regulatory concerns. The capitalization criterion of Commentary .01(a)(A)(1), together with the liquidity requirement applicable to the Index components, are designed to prevent fraudulent or manipulative acts.<sup>16</sup> The Commission believes that the Index should not be susceptible to manipulation in light of the characteristics of the Index components when viewed as a whole. The generic listing requirement that all securities in the Index be NMS Stocks is designed to ensure that listed Units are not used as surrogates for trading in unregistered securities.<sup>17</sup> The Commission believes that the Shares will not serve this function because non-NMS stocks account for only approximately 3.7% of the Index weight.

In addition, the Commission notes that it has not received any comments regarding the proposed rule change.

### IV. Conclusion

For the forgoing reasons, the Commission believes that the Exchange's proposal to list and trade the Shares is consistent with the Act. This order is based on the Exchange's representations.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2010-64) be, and it hereby is, approved.

<sup>14</sup> See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14).

<sup>15</sup> See notes 6 and 7, *supra*.

<sup>16</sup> See Securities Exchange Act Release No. 44551, *supra* note 14, 66 FR at 37719.

<sup>17</sup> See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571, 19576 (April 18, 2007) (SR-NYSEArca-2006-86).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62734; File No. SR-MSRB-2010-06]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change To Establish a Subscription To the Information Collected by the MSRB's Short-term Obligation Rate Transparency ("SHORT") System

August 17, 2010.

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 August 10, 2010, the Municipal Securities Rulemaking Board ("MSRB") 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 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 is filing with the Commission a proposed rule change to establish a subscription to the information collected by the MSRB's Short-term Obligation Rate Transparency ("SHORT") System. The MSRB has requested that the proposed rule change be made effective on September 30, 2010.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org>, at the MSRB's principal office, and at the Commission's Public Reference Room. If approved, the rule text for the Short-term Obligation Rate Transparency Subscription Service would be available on the MSRB Web site at <http://www.msrb.org/Rules-and-Interpretations.aspx> under the heading Information Facilities.

<sup>19</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.

<sup>10</sup> See also Notice, *supra*, note 3.

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> In addition to the requirements set forth in Commentaries .01(a)(A)(1) and .01(a)(A)(5) discussed above, Rule 5.2(j)(3) also provides, among other things, that (i) the component stocks (excluding Derivative Securities Products) representing at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares, or minimum notional monthly trading volume of \$25 million, (ii) the most heavily weighted component stock (excluding Derivative Securities Products) in an underlying index or portfolio cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks (excluding Derivative Securities Products) cannot together exceed 65% of the weight of the index or portfolio, and (iii) the index or portfolio must include a minimum of 13 stocks. See Commentaries .01(a)(A)(2), .01(a)(A)(3) and .01(a)(A)(4) to NYSE Arca Equities Rule 5.2(j)(3).

## 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. 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

The SHORT System is a facility of the MSRB for the collection and dissemination of information about securities bearing interest at short-term rates. Currently, these securities consist of Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). The proposed rule change consists of a proposal to establish a subscription to the information collected by the SHORT System. The data stream subscription would be provided through a Web service and would be made available for an annual fee of \$10,000.<sup>3</sup>

Information disseminated from the SHORT System also is posted to the MSRB's Electronic Municipal Market Access (EMMA) Web portal pursuant to the EMMA short-term obligation rate transparency service. Such information would be made available to subscribers simultaneously with the availability of such information to the EMMA Web portal. The subscription service would make the information collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions.

Data elements with respect to the SHORT subscription service that would be provided through the data stream would be set forth in the SHORT System

Subscriber Manual posted on the MSRB Web site. The SHORT System Subscriber Manual would provide a complete, up-to-date listing of all data elements made available through the SHORT subscription service, including any additions, deletions or modifications to disseminated data elements, detailed definitions of each data element, specific data format information, and information about technical data elements to support transmission and data-integrity processes between the SHORT System and subscribers.

Subscriptions would be provided through computer-to-computer data streams utilizing XML files for data. Appropriate schemas and other technical specifications for accessing the Web services through which the data stream will be provided would be set forth in the SHORT System Subscriber Manual posted on the MSRB Web site.

The MSRB would make the SHORT subscription service available on an equal and non-discriminatory basis. Subscribers would be subject to all of the terms of the subscription agreement to be entered into between the MSRB and each subscriber, including proprietary rights of third parties in information provided by such third parties that is made available through the subscription. The MSRB would not be responsible for the content of the information submitted by submitters that is distributed to subscribers of the SHORT subscription service.

#### 2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,<sup>4</sup> 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, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The SHORT subscription service would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The subscription service would make

the information collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions. Broad access to the information collected by the SHORT System, in addition to the public access through the EMMA Web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about Auction Rate Securities and Variable Rate Demand Obligations.

Furthermore, broader re-dissemination and third-party use of the information collected by the SHORT System should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities (including any changes thereto).

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

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would make the information collected by the SHORT System available to all persons on an equal and non-discriminatory basis. The information provided through the subscription service would be available to all subscribers simultaneously with the availability of the information through the EMMA Web portal. In addition to making the information available for free on the EMMA Web portal to all members of the public, the MSRB would make the information collected by the SHORT System 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 adding value-added services and products based on

<sup>3</sup> The proposed subscription price would cover a portion of the administrative, technical and operating costs of the SHORT subscription service but would not cover all costs of such subscription service or of the SHORT System. The MSRB has proposed establishing the subscription price at a commercially reasonable level.

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

such information on terms determined by each subscriber.<sup>5</sup>

*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 on the proposed rule change.

**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 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2010-06 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2010-06. 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 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 a.m. and 3 p.m. Copies of such 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-2010-06 and should be submitted on or before September 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-62727; File No. SR-DTC-2010-09]**

**Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Revise its Procedures Regarding Securities Delivered to or From Participant Accounts Through the Automated Customer Account Transfer Service of National Securities Clearing Corporation**

August 16, 2010.

**I. Introduction**

On June 4, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2010-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on July 2, 2010.<sup>2</sup> No comment letters were received on

the proposal. This order approves the proposal.

**II. Description**

DTC is modifying certain provisions of its Settlement Services Guide ("Guide") in connection with concurrent rule changes being made by the National Securities Clearing Corporation ("NSCC") concerning Automated Customer Account Transfer Service ("ACATS") transfers processed through the Continuous Net Settlement ("CNS") system.<sup>3</sup>

NSCC's ACATS system enables members to effect automated transfers of customer accounts among themselves.<sup>4</sup> For ACATS transfers processed through NSCC's CNS system,<sup>5</sup> long and short positions are passed against Members' positions at DTC. Available securities are delivered from short Members' DTC accounts and allocated to long Members' DTC accounts by book-entry transfer.

An NSCC Member to which a customer's securities account is to be transferred through ACATS ("Receiving Member") initiates the transfer process by submitting a request to NSCC. For the transfer to be processed, the request must be accepted by the NSCC Member from which the customer's securities are being transferred ("Delivering Member"). After a Delivering Member accepts a customer account transfer request and all other preconditions of NSCC's rules for processing ACATS transfer are met, all CNS-eligible securities in the customer's account, except securities that the Receiving Member notifies NSCC should not be transferred, are entered into NSCC's CNS accounting

<sup>3</sup> SR-NSCC-2010-05. Securities Exchange Act Release Nos. 62385 (June 25, 2010), 75 FR 38579 (July 2, 2010) and 62384 (June 25, 2010), 75 FR 38581 (July 2, 2010).

<sup>4</sup> ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

<sup>5</sup> CNS is an ongoing accounting system which nets today's Settling Trades with yesterday's Closing Positions to produce a net short or long position for a particular security for a particular Member. NSCC is the contra party for all positions. The positions are then passed against the Member's Designated Depository positions and available securities are allocated by book-entry transfer. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

<sup>5</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>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 62384 (June 25, 2010), 75 FR 38581 (July 2, 2010).