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

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–38 and should be submitted by October 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

[14] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26661 Filed 10–5–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40499; File No. SR–MSRB–97–9]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the Municipal Securities Rulemaking Board Relating to Rule G–38 on Consultants

September 29, 1998.

On March 18, 1998,[1] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change and Amendment No. 1 (SR–MSRB–97–9) hereafter referred to collectively as the ''proposed rule change.'' The proposed rule change would give brokers, dealers and municipal securities dealers (collectively referred to as ''dealers'') the option of disclosing their consulting arrangements to issuers, pursuant to section (c) of the rule, on either an issue-specific or issuer-specific basis. Notice of the proposed rule change appeared in the **Federal Register** on May 18, 1998.[4] The Commission received no comment letters concerning the proposed rule change. The Commission is approving the proposed rule change.

I. Description of Proposal

Rule G–38, on consultants, requires dealers: (1) to have written agreements with certain individuals who are used by a dealer, directly or indirectly, to obtain or retain municipal securities business (''consultants''), and (2) to disclose such consulting arrangements directly to issuers and to the public through disclosure to the Board. Section (c) of the rule currently requires that each dealer disclose, in writing, to each issuer with which the dealer is engaging or is seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer. Dealers are required to make such disclosures prior to the issuer's selection of any dealer in connection with the particular municipal securities business sought. The Board amended this rule to give brokers, dealers and municipal securities dealers (collectively referred to as ''dealers'') the option of disclosing their consulting arrangements to issuers, pursuant to section (c) of the rule, on either an issue-specific or issuer-specific basis.

According to the Board, this issue-specific disclosure requirement has created compliance problems for dealers in cases where issuers of municipal securities frequently bring new issues to market as well as in the co-manager selection process. For example, an issuer may bring new issues to market several times a month, and if a dealer is using a consultant to obtain a syndicate slot in each such issue, the dealer is required to disclose the same information to the same issuer month after month and possibly week after week. Furthermore, dealers who use a consultant to help obtain co-manager business sometimes have difficulty complying with Rule G–38(c) because, unlike the lead manager, a co-manager may learn of its selection for that business after the selection of the lead manager, thereby making it impossible for the dealer to disclose its consulting arrangements prior to the issuer's selection of any dealer, as required by the rule.

While the timing of the issue-specific disclosure requirement in Rule G–38(c) is appropriate in the majority of cases, it can be a problem in the context of frequent issuers of municipal securities and in the co-manager selection process. Thus, Rule G–38(c) has been amended to give dealers the option of disclosing their consulting arrangements to issuers on either an issue-specific or issuer-specific basis. Pursuant to the amendment, if a dealer chooses to disclose information regarding a consulting arrangement on an issuer-specific basis,[5] the dealer must submit the information, in writing, to the issuer ''at or prior to the consultant's first direct or indirect communication with that issuer for any municipal securities business.'' [6]

[1] The Board initially submitted this proposal on November 24, 1997. However, a substantive amendment was requested to modify and clarify ambiguous timing issues in the proposed rule language. The Board filed Amendment No. 1 on March 18, 1998.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 39983 (May 12, 1998), 63 FR 27337.

[5] In contrast, disclosures made by a dealer on an issue-specific basis continue to be required prior to the issuer's selection of any dealer for the particular municipal securities business being sought.

[6] The initial proposal would have required that such disclosures be made ''within three business days of the consultant's first direct or indirect

Continued

To ensure that information on consultant arrangements, once disclosed, remains current, the amendment also requires dealers to (1) promptly notify the issuer, in writing, of any change in the information disclosed; and (2) update issuers, in writing, within one year of the previous disclosure of each consultant's name, company, role and compensation arrangement, even where such information has not changed.[7] Amendment No. 1 clarifies that the annual updating requirement for dealers disclosing information on an issuer-specific basis is triggered by the previous full disclosure of the consultant's name, company, role and compensation arrangement (and not any interim disclosure of changes to such information). However, this annual updating requirement would cease to apply if the dealer is no longer using the consultant, directly or indirectly, to attempt to obtain or retain municipal securities business with a particular issuer.

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[8] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[9] of the Act. The Commission is satisfied that the amendments to Rule G–38(c) provide the necessary relief to dealers from the heretofore stringent application of the rule while still essentially maintaining the rule's original intent and purpose. Prior to this proposed rule change, some dealers had difficulty meeting the ''any dealer'' requirement of the rule, because they had no way of knowing when the lead manager was selected. In cases where it is difficult to determine when a dealer is chosen (*i.e.*, co-manager selection), the amended rule provides an option for the dealer to disclose its consulting relationship before the specific dealer is selected.

The Commission understands that the timing of disclosure requirements had to be changed to make the rule more workable. However, the Commission was concerned that the initial amendment weakened the original goal of the rule (*i.e.*, for dealers to provide complete, timely disclosure concerning their consulting arrangements to issuers so that issuers can evaluate all potential underwriters before making a final decision). Given the rule's goal, the Commission believed that the initial proposal, allowing the dealer to make its disclosures within three days after the consultant had contacted the issuer,[10] would have greatly lessened the effectiveness of the rule. Thus, the Commission requested Amendment No. 1 to close potential compliance loopholes in the dealers' disclosure requirements and align the proposal with the rule's intent. The Commission believes Amendment No. 1 preserves the original intent and purpose of the rule and stymies any potential collusive activity by dealers and their consultants to circumvent Rule G–37.

III. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–MSRB–97–9) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26722 Filed 10–5–98; 8:45 am]

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communication with the issuer.'' However, the Commission requested that the timing requirement be more stringent. Thus, the Board filed Amendment No. 1, eliminating the dealers' three day disclosure window and replacing it with the current language. *See* note 1, *supra*.

[7] Pursuant to Rule G–8(a)(xviii) on recordkeeping, dealers are required to maintain records of all disclosures made pursuant to Rule G–38(c). This would apply to disclosures made pursuant to the amendment.

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. As a result of this amendment, municipal securities dealers should experience a decline in the number of disclosures required to be made to issuers regarding their consulting arrangements. A decline in required disclosure should translate to a decline in costs associated with these filings, thus allowing dealers to allocate resources to other areas. The implementation of this amendment should also enhance dealers' efficiency as recordkeeping and compliance become less burdensome. 15 U.S.C. 78c(f).

[9] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are 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.

[10] *See* note 6, *supra*.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40500; File No. SR–NASD–98–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Mutual Fund Breakpoint Sales

September 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 10, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation is proposing to amend NASD Interpretive Memorandum 2830–1 regarding mutual fund breakpoint sales to clarify its application to modern portfolio investment strategies. Below is the text of the proposed rule change. Proposed new language is italicized.

IM–2830–1 ''Breakpoint'' Sales

The sale of investment company shares in dollar amounts just below the point at which the sales charge is reduced on quantity transactions so as to share in the higher sales charges applicable on sales below the breakpoint is contrary to just and equitable principles of trade.

Investment company underwriters and sponsors, as well as dealers, have a definite responsibility in such matters and failure to discourage and to discontinue such practices shall not be countenanced.

For purposes of determining whether a sale in dollar amounts just below a breakpoint was made in order to share in a higher sales charge, the Association will consider the facts and circumstances, including, for example, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide

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

[2] 17 CFR 240.19b–4.