

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. The Commission also believes that the proposal is consistent with section 11A(a)(1)(C)²¹ and 11A(a)(1)(D)²² of the Act. The proposal is consistent with section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions. Moreover, the proposal is consistent with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.²³ In connection with this effort, the Commission has requested an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for 90 days so that the Exchange may compile this data for the Commission's review.

At the conclusion of this pilot's extension, the Commission requests that the Exchange rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders. Thus, the

Commission's approval of the pilot extension has several ramifications. Approval will: (1) Allow the Exchange to operate without interruption; (2) provide a period for compilation of additional data; and (3) allow the Exchange to revise the language of the existing rules for clarity and ease of understanding in the public interest and for protection of investors.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

It Is Therefore Ordered, pursuant to section 19(b)(2)²⁴ of the Act that the proposed rule change (SR-CHX-99-27) be, and hereby is, approved through May 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-2882 Filed 2-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42374; File No. SR-MSRB-99-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board to Amend Rule G-36

February 2, 2000.

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 December 10, 1999, the Municipal Securities Rulemaking Board ("MSRB" or the "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change to amend Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the Board or its designee. The text of the proposed rule change is set forth below. Deletions are in brackets; additions are in italics.

Rule G-36—Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee

(a)-(b) No Change.

(c) Delivery Requirements for Issues not Subject to Securities Exchange Act Rule 15c2-12.

(i) Subject to paragraph (iii) below, each broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities not subject to Securities Exchange Act Rule 15c2-12 for which an official statement in final form is prepared by or on behalf of the issuer shall send to the Board or its designee, by certified or registered mail, or some other equally prompt means that provides a record of sending, [within] *by the later of* one business day [of] *after* delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer *or one business day after receipt of the official statement in final form from the issuer or its designated agent*, the following documents and written information: two copies of the official statement in final form[, if prepared by or on behalf of the issuer]; and[, if an official statement in final form is prepared,] two copies of completed Form G-36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii)-(iii)³ No change.

(d)-(f) No change.

* * * * *

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

³ Filing amended to clarify text of proposed rule change by including (iii). Phone conversation between Ernesto A. Lanza, Associate General Counsel, MSRB, and Melinda R. Diller, Attorney, Division of Market Regulation, Commission on January 24, 2000.

²¹ 15 U.S.C. 78k-1(a)(1)(C).

²² 15 U.S.C. 78k-1(a)(1)(D).

²³ See 1997 Order, *supra* note 7.

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

Rule G-36 requires, among other things, that a broker, dealer or municipal securities dealer (a "dealer") acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G-36(OS). The rule was adopted by the Board for the purpose of creating a repository for official statements that would function much like a public library that stores, indexes and provides copies of official statements.⁴ This library, known as the Municipal Securities Information Library[®] (or MSIL[®]) system,⁵ is intended to serve as a central source for information regarding municipal securities trading in the primary and secondary markets. As originally adopted by the Board and approved by the Commission, Rule G-36 applied to all primary offerings of municipal securities regardless of principal amount, other than primary offerings that qualified for exemption under paragraph (d)(1) of Rule 15c2-12 under the Act.⁶ The Board subsequently

⁴ See Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990); "Delivery of Official Statement to the Board: Rules G-36 and G-8," *MSRB Reports*, Vol. 9, No. 3 (November 1989) at 3.

⁵ Municipal Securities Information Library and MSIL are registered trademarks of the Board.

⁶ In primary offerings subject to Rule 15c2-12, the underwriter is required under paragraph (b)(3) of the Rule to contract with the issuer to receive the final official statement within seven business days after any final agreement to purchase, offer or sell the municipal securities (the "sale date") and in sufficient time to accompany any confirmation that requests payment from any customer. Rule 15c2-12 does not apply to primary offerings with an aggregate principal amount of less than \$1,000,000 ("Small Issue Securities"). In addition, paragraph (d)(1) of the Rule exempts primary offerings in authorized denominations of \$100,000 or more if the securities (i) are sold to no more than 35 persons with knowledge and experience in financial and business matters, capable of evaluating the merits and risks of the investment and not purchasing for more than one account or with a view to distribution ("Limited Offering Securities"); (ii) have a maturity of nine months or less ("Short-Term Securities"); or (iii) at the option of the holder may be tendered to the issuer or its agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by the issuer or its agent ("Puttable Securities"). Thus, as originally adopted, Rule G-36 applied to all primary offerings subject to Rule 15c2-12 as well as

amended Rule G-36 to subject to its requirements certain categories of primary offerings that are exempt under Rule 15c2-12(d)(1), thereby further extending the reach of Rule G-36 beyond the scope of Rule 15c2-12.⁷ The Board felt that expanding the scope of the rule to include such offerings would result in a more complete collection of disclosure documents and the overall integrity, efficiency, and liquidity of the municipal securities market would be increased.

For any primary offering subject to Rule G-36(c)(i), the underwriter currently is required to send two copies of the official statement, if one is prepared, in final form with two copies of Form G-36(OS), to the board by the business day after the issuer delivers the municipal securities to the underwriter (the "bond closing"). The Board reviewed certain information included by underwriters on Forms G-36(OS) submitted to the Board's MSIL[®] system in 1998, including approximately 2,000 such forms submitted in connection with primary offerings subject to Rule G-36(c)(i).⁸ For these offerings, the Board found that 96% of the official statements in final form were reported to have been delivered by issuers to

to Small Issue Securities for which an official statement in final form was prepared, but did not apply to Limited Offering Securities, Short-Term Securities and Puttable Securities.

⁷ See Securities Exchange Act Release No. 32086 (March 31, 1993), 58 FR 18290 (April 8, 1993); "Delivery of Official Statements to the Board: Rule G-36," *MSRB Reports*, Vol. 12, No. 3 (September 1992) at 11. Thus only primary offerings exempt from Rule 15c2-12 for which no official statement in final form is prepared and Limited Offering Securities remain exempt from Rule G-36. Those offerings that currently are subject to Section (c)(i) of Rule G-36 consist of Small Issue Securities, Short-Term Securities and Puttable Securities, if an official statement in final form has been prepared by or on behalf of the issuer.

⁸ The Board reviewed all Forms G-36(OS) for primary offerings having sale dates in 1998 received in acceptable form by the MSIL[®] system on or prior to December 31, 1998. Excluded from this review were any Forms G-36(OS) that omitted the sale date, date of receipt by the underwriter of the official statement from the issuer or date that the underwriter sent the official statement to the MSIL[®] system. Information provided by underwriters on Form G-36(OS) is not independently verified by the Board but is provided to the appropriate enforcement agency on a regular basis. Underwriters are required to certify that all information contained in each Form G-36(OS) submitted to the MSIL[®] system is true and correct. Inaccuracies in the information reported by underwriters on Form G-36(OS) could subject such underwriter to appropriate enforcement action. The results of the Board's review could be affected by any such inaccuracies. The full results of this review, including results relating to other provisions of Rule G-36 and to the provisions of Rule G-32 and Rule 15c2-12, were published in "Official Statement Deliveries Under Rules G-32 and G-36 and Exchange Act Rule 15c2-12," *MSRB Reports*, Vol. 19, No. 3 (Sept. 1999) at 29 (the "Board Notice").

underwriters within one business day after closing. The 4% of official statement deliveries by issuers to underwriters that were reported as being made more than one business day after closing and therefore too late to permit underwriters to comply with Rule G-36(c)(i) constituted more than half (approximately 54%) of all underwriter failures to meet the time frame of that section.⁹

The Board believes that there is significant room for improvement with respect to underwriter compliance with Rule G-36(c)(i) in those situations in which the official statement is received in sufficient time to send to the Board on a timely basis. Underwriters experiencing problems in this area should review their internal procedures for ensuring that official statements delivered by issuers are handled in a manner that permits the accurate completion and the prompt sending of Form G-36(OS) and the official statement to the Board.

However, the Board is concerned that more than half of the instances in which underwriters have not met the time frame of Rule G-36(c)(i) resulted from official statements that were reported to have been delivered by issuers more than one business day after closing. Of course, the Board has no authority to require that an issuer prepare an official statement or that any official statement that is prepared be delivered to underwriters within a specified time frame. In addition, the Commission excepted those primary offerings that are subject to Rule G-36(c)(i) from Rule 15c2-12. Therefore, the MSRB believes that no regulatory framework exists to compel, directly or indirectly, the preparation and delivery of an official statement in such offerings.

The Board notes that in approximately 36% of the offerings subject to Rule G-36(c)(i) the number of business days between the sale date and the business day following closing is less than ten. As a result, for these offerings, the requirement in Rule G-36(c)(i) that the underwriter send the official statement to the Board within one business day after the bond closing provides the underwriter with less time to comply with its official statement submission requirement than the ten business day outside time frame of Rule G-36(c)(i), were such a time frame

⁹ The remaining failures consisted of situations where the issuer was reported to have delivered the official statement to the underwriter in sufficient time for the underwriter to comply with Rule G-36(c)(i) but the underwriter delayed sending the official statement to the Board until later than the business day after the bond closing.

applicable to these offerings.¹⁰ At the same time, however, issuers in these offerings generally have not contracted with underwriters to deliver official statements within seven business days of the sale date, as provided in paragraph (b)(3) of Rule 15c2-12, since such offerings are exempt from that rule. Thus, in more than one-third of all offerings subject to Rule G-36(c)(i), underwriters are required to act more quickly than they would under Rule G-36(b)(i) even though there is no concomitant obligation on the part of issuers to deliver an official statement within any particular time frame.

As a result, the Board published the Board Notice seeking comment on, among other things, a draft amendment to Rule G-36(c)(i) which the Board believed would address this situation. After reviewing the comments received on the Board Notice, the Board determined to adopt the draft amendment, with a minor clarifying change.¹¹ As amended, the rule would provide that an underwriter in a primary offering subject to Rule G-36(c)(i) for which an official statement in final form is prepared by the issuer must send two copies of the official statement in final form, together with two copies of Form G-36(OS), to the Board by the later of (i) one business day after the bond closing or (ii) one business day after receipt of the official statement from the issuer.¹² The proposed rule change is intended solely to provide relief to underwriters that face violation of Rule G-36(c)(i) as a result of circumstances beyond their control and is not intended to imply that underwriters and other dealers may ignore their continuing obligation to deliver official statements for new issue municipal securities to customers by settlement, as required under rule G-32.

2. Statutory Purpose

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)¹³ of the Act, which

¹⁰ Section (b)(i) of Rule G-36 requires the underwriter of a primary offering subject to Rule 15c2-12 to send two copies of the final statement, together with two copies of Form G-36(OS), to the Board within one business day after receipt of the final official statement from the issuer but no later than 10 business days after the sale date.

¹¹ The change in language makes clearer the fact that Section (c)(i) will continue to apply to a primary offering only if an official statement in final form is prepared.

¹² In contrast, Rule G-36(c)(i) currently requires that the underwriter send the official statement to the Board by the business day after the bond closing, regardless of whether the underwriter has in fact received the official statement by such day.

¹³ 15 U.S.C. 78o-4(b)(2)(C).

provides, in part, that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just an 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 Board believes that the proposed rule change is consistent with the Act in that it removes an impediment to a free and open market in municipal securities without adversely affecting the protection of investors and of the public interest.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all municipal underwriters.

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

In the Board Notice, the Board sought comment on a draft amendment to Rule G-36(c)(i) that would require an underwriter in a primary offering subject to Rule G-36(c)(i) for which an official statement in final form has been prepared to send the official statement to the Board by the later of (i) one business day after the bond closing or (ii) one business day after receipt of the official statement from the issuer. The Board received two comment letters in response to the Board Notice, only one of which addressed the draft amendment.¹⁴

The Bond Market Association (TBMA) states that it "strongly supports" the draft amendment. TBMA further states that the change in the timing requirement "means that underwriters and issuers could schedule closings on the basis of the needs of the transaction, rather than for the purpose of allowing a sufficient number of days to increase

¹⁴ TBMA's letter addressed the draft amendment as well as certain other issues relating to Board Rules G-36 and G-32 and Rule 15c2-12. The comment letter from Charles Schwab & Co. Inc. ("Schwab") addressed certain issues relating to Rule G-32. The Board is considering the comments received on these other matters but has not determined to take any rulemaking action with respect to Rule G-32 or any provisions of Rule G-36, other than Section (c)(i), at this time.

the odds that the official statement will be ready in time for the closing."

The Board strongly believes that this second statement of TBMA demonstrates a misunderstanding of the nature of the proposed rule change, the purpose of official statements in the municipal securities market and the other obligations of dealers with respect to delivery of official statements. In the Board Notice, the Board observed that for new issue municipal securities, dealers typically seek, and customers generally expect, to settle their trades on the same day as the closing of the underwriting. As a result, underwriters need to receive the official statement from the issuer in sufficient time to ensure that the official statement can be delivered to customers by settlement of their transactions, as required under Rule G-32. If an issuer prepares an official statement in final form but does not deliver it to the underwriter by the bond closing, dealers would continue to be prohibited from settling their transactions with customers until they have delivered the official statement to the customers, with certain very limited exceptions.¹⁵ Thus, other than offerings falling within the narrow exceptions provided under Rule G-32, the only offerings in which "the needs of the transaction" would not include delivery of the official statement by closing would be those in which underwriters expect to hold the securities in inventory until the official statement is in fact delivered and therefore made available for redelivery to customers.

The completion and delivery of an official statement by the closing of the underwriting is not a technical requirement imposed by the Board. If an official statement serves no purpose in an offering that is exempt from Rule 15c2-12, then the issuer need not prepare one. Unless an issuer is preparing an official statement for reasons entirely unrelated to the offering that it describes, it is difficult to understand how completion of an official statement after the underwriters and initial customers have received delivery of their securities can be rationalized.¹⁶

¹⁵ Commercial paper is wholly exempt from the Rule G-32 customer delivery requirement and preliminary official statements may be delivered by settlement (with official statements in final form sent when they become available) for Puttable Securities.

¹⁶ Of course, the Board believes that there is significant value to the secondary market in having official statements available throughout the life of the issue. Nonetheless, the Board sees no way of justifying the existence of an official statement based on the needs of the secondary market while ignoring the needs of the primary market.

Although the submission requirement under current Rule G-36(c)(i) may influence an issuer to give completion of the official statement in final form a higher priority, this requirement also may serve as a disincentive to prepare the official statement in final form, since an underwriter currently can avoid a Rule G-36(c)(i) violation by prevailing upon the issuer not to prepare an official statement in final form at all (e.g., an underwriter that has purchased an issue based on a preliminary official statement could advise an issuer that it need not finalize the official statement). Changing the time frame of the Rule G-36(c)(i) submission requirement would eliminate this disincentive while providing relief for underwriters that may face a potential rule violation for reasons beyond their control. The official statement delivery requirement under Rule G-32 would continue to provide a powerful incentive to underwriters to urge issuers to complete the official statement in final form in sufficient time to permit the underwriters and the other dealers to which they sell such new issue municipal securities to deliver the official statement to customers by settlement.

Although TBMA supports the draft amendment to Rule G-36(c)(i), it suggests that the Board further amend Rule G-36(c)(i) to extend the one-business day time frame to two-business days. TBMA argues that "it is often logistically difficult to meet the one-day requirement" and that the MSIL[®] systems serves "archival rather than real-time disclosure purposes."¹⁷ In adopting Rule G-36(c)(i) and creating the MSIL[®] system, the Board undertook to make available to the industry a comprehensive repository of official statements for use in both the primary and secondary markets. In addition to serving the vital archival purpose of ensuring that information regarding municipal securities is available throughout the life of the securities, the MSIL[®] system serves an important function in the primary market as an alternate source (through its subscribers) of official statements for dealers seeking to fulfill their Rule G-32 customer delivery obligation. Delaying the submission of official statements to the Board could impair the MSIL[®] system's usefulness in the primary market.¹⁸

¹⁷ TBMA states "that it is difficult to ensure the desirable level of coordination between the underwriter personnel who are best-positioned to authenticate the official statement as the final official statement and the personnel who are responsible for filing with the Board."

¹⁸ Schwab notes that it has "found that if the dealers [from which it purchases new issue

Without a more substantial showing of hardship to the dealer community, the Board believes that extension of the time frame for underwriters to turn the official statement around to the Board is not justified at this time. The ability to meet this requirement is entirely within the control of dealers, and they should review their procedures to ensure that this task is assigned to the appropriate personnel having a clear understanding of the procedural and substantive requirements of Rule G-36. To the extent that dealers experience difficulty in coordinating the actions of various personnel involved in the handling of official statements, they should consider whether they have instituted procedures that adequately provide for compliance with the rule.

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 *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 MSRB 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, NW, Washington, DC 20549-0609. 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

municipal securities] do not have copies of the final official statement, such copies are also generally unavailable from the managing underwriter financial printer, Bloomberg or another Nationally Recognized Municipal Securities Information Repository." Delays in receiving official statements by the MSIL[®] system would further reduce their availability from these other sources.

available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR-MSRB-99-11 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-2880 Filed 2-8-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42376; File No. SR-NASD-99-77]

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

February 2, 2000.

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 December 17, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7090 to change the annual listing fees for the Mutual Fund Quotation Service ("MFQS" or "Service"). Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7090. Mutual Fund Quotation Service

(a) Funds included in the Mutual Fund Quotation Service ("MFQS") shall be assessed an annual fee of [\$275] *\$400* per fund authorized for the News Media

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.