

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

The Exchange 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.

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

The Exchange neither solicited nor received 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 adequate 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 Amex 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, as amended, 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 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 Amex. All submissions should refer to File No. SR-Amex-00-03 and should be submitted by July 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*  
[FR Doc. 00-16206 Filed 6-26-00; 8:45 am]  
**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42967; File No. SR-MSRB-99-11]

**Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change To Amend Rule G-36**

June 21, 2000.

**I. Introduction**

On December 10, 1999, the Municipal Securities Rulemaking Board ("MSRB," or the "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> 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 proposed rule change was published for comment in the **Federal Register** on February 9, 2000.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

**II. Description of the Proposal**

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. 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).

Originally, 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.<sup>4</sup> The Board subsequently amended Rule G-36 to include certain categories of primary offerings that are exempt under Rule 15c2-12(d)(1).<sup>5</sup> 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").

As amended, the rule would require 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 to 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.<sup>6</sup>

**III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>7</sup> and the rules and regulations thereunder applicable to the MSRB.<sup>8</sup> In particular, the Commission finds the amendments to MSRB Rule G-36 consistent with the requirements of Section 15B(b)(2)(C)<sup>9</sup> of the Act, which provides, in part, that the Board'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

<sup>4</sup> Originally, Rule G-36 applied to all primary offerings subject to Rule 15c2-12, as well as 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.

<sup>5</sup> 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. Currently, Small Issue Securities, Short-Term Securities, and Puttable Securities, are subject to Rule G-36(c)(1) where an official statement in final form has been prepared by or on behalf of the issuer.

<sup>6</sup> 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.

<sup>7</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> Securities Exchange Act Release No. 42374 (February 2, 2000), 65 FR 6427 (February 9, 2000).

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 represents that the proposed rule change is intended to provide relief to underwriters that face violation of Rule G-36(c)(i) caused by a delay in delivery by issuers for whom no concomitant obligations exists to delivery an official statement by any particular date. The Commission believes that because underwriters and other dealers are still required to adhere to their continuing obligation under Rule G-32 to deliver official statements for new issue municipal securities to customers by settlement, the MSRB proposal will foster cooperation among persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, without adversely affecting the protection of investors and the public interest.

In general, underwriters may be exposed to a potential violation of Rule G-36 when an issuer fails to provide the official statement. The Commission notes that pursuant to Rule 15c2–12(b)(3), underwriters are required to contract to obtain official statements and thus have an enforceable mechanism to obtain the official statements. The Commission also appreciates the situation of underwriters who, because an issuer does not provide a final official statement and is not required to do so under a 15c2–12 contract, finds themselves in violation of Rule G-36(c)(i). However, the Commission expects that an underwriter that receives an official statement will provide the official statement to the Board without delay.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-MSRB-99-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

Deputy Secretary.

[FR Doc. 00-16210 Filed 6-26-00; 8:45 am]

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42965; File No. SR-NASD-99-74]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change as Amended by the National Association of Securities Dealers, Inc. Relating To an Exemption From NASD Conduct Rule 2710 for Closed-End Management Companies That Make Periodic Repurchases of Their Securities Under Rule 23c-3(b) of the Investment Company Act of 1940

June 20, 2000.

#### I. Introduction

On December 20, 1999, the National Association of Securities Dealers, Inc. (“NAD” or “Association”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change regarding an exemption from NASD Conduct Rule 2710 (“Corporate Financing Rule”) for closed-end management companies that make periodic repurchases of their securities under Rule 23c-3(b)<sup>1</sup> of the Investment Company Act of 1940 (“1940 Act”)<sup>2</sup> NASD Regulation filed an amendment to the proposed rule change on February 29, 2000, which amendment entirely replaced and superseded the initial proposal.<sup>3</sup> On March 20, 2000, NASD Regulation again amended the proposal.<sup>4</sup> The Proposed rule change, as amended, was published for comment in the **Federal Register** on April 7, 2000.<sup>5</sup> The Commission received one comment letter on the proposal.<sup>6</sup> This order grants approval to the proposed rule change, as amended.

<sup>1</sup> 17 CFR 270.23c-3(b).

<sup>2</sup> 15 U.S.C. 80a-1, *et seq.*

<sup>3</sup> See February 28, 2000 letter and attachments from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), SEC (“Amendment No. 1”). In Amendment No. 1, NASD Regulation made changes to the language of the proposed new rule. Exhibits 2 through 4 that were attached to the original filing are incorporated by reference in Amendment No. 1.

<sup>4</sup> See March 17, 2000 letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC (“Amendment No. 2”). In Amendment No. 2, NASD Regulation made minor, technical changes to the proposed new rule.

<sup>5</sup> See Securities Exchange Act Release No. 42601 (March 30, 2000), 65 FR 18405 (SR-NASD-99-74).

<sup>6</sup> See April 27, 2000 letter from Kathy D. Ireland, Associate Counsel, Investment Company Institute (“ICI”), to Jonathan G. Katz, Secretary, SEC (“ICI Letter”).

## II. Description of the Proposal

NASD Regulation proposes to amend the Corporate Financing Rule and NASD Conduct Rule 2830 to exempt public offerings by closed-end investment management companies that make periodic tender offers for their securities in compliance with Rule 23c-3(b)<sup>7</sup> of the 1940 Act<sup>8</sup> from the filing requirements and limitations on underwriting compensation of the Corporate Financing Rule and, instead, subject such offerings to the sales charge limitations of NASD Conduct Rule 2830.

The Corporate Financing Rule regulates the underwriting terms and other arrangements of public offerings of securities. Subparagraph (b)(8)(C) of the Corporate Financing Rule provides that securities of investment companies registered under the 1940 Act<sup>9</sup> are exempt from filing and compliance with the Corporate Financing Rule, unless the offerings is of securities of a management company defined as a “closed-end” company in Section 5(a)(2) of the 1940 Act<sup>10</sup> (“closed-end funds”).<sup>11</sup> Thus, closed-end funds are subject to the filing requirements, filing fees, and regulations of the Corporate Financing Rule. Open-end investment companies (“open-end funds”) are exempt from filing with NASD Regulation under the Corporate Financing Rule. Instead, open-end funds’ sales charges are regulated under NASD Conduct Rule 2830.

Closed-end funds are subject to the core provisions of the 1940 Act<sup>12</sup> that also apply to open-end funds, including prohibitions on affiliated transactions, obligations requiring shareholder approval of advisory contracts, anti-pyramiding restrictions, and board composition requirements. However, such funds are not subject to other 1940 Act<sup>13</sup> restrictions applicable to open-end funds, including certain limitations on leverage and certain obligations pertaining to the liquidity of investments.

The NASD has applied the Corporate Financing Rule and its predecessor rule to members’ sales of the securities of closed-end funds on the basis that

<sup>7</sup> 17 CFR 270.23c-3(b).

<sup>8</sup> 15 U.S.C. 80a-1, *et seq.*

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 80a-5(a)(2).

<sup>11</sup> Section 5(a)(1) of the 1940 Act defines “open-end company” as “a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer.” Section 5(a)(2) of the 1940 Act defines “closed-end company” as “any management company other than an open-end company.”<sup>15</sup> U.S.C. 80a-5(a)(1) and (2).

<sup>12</sup> 15 U.S.C. 80a-1, *et seq.*

<sup>13</sup> *Id.*