

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-2818 Filed 2-1-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43885; File No. SR-MSRB-00-02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rules G-8 and G-38 and Form G-37/G-38

January 25, 2001.

I. Introduction

On January 27, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending Rule G-38, on consultants, Rule G-8, on books and records, and Section IV of Form G-37/G-38 and the attachment page to the form. The Board filed Amendment No. 1 to the proposed rule change on November 15, 2000.³ The proposed rule change was published for comment in the **Federal Register** on November 22, 2000.⁴ The Commission received on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Board believes that the current language of Rules G-38 and G-8 and the formats of Form G-37/G-38, the attachment page, and the Instructions, are not as clear as they could be about the information required for identifying a consultant. The Board states that it has received inquiries from dealers that have indicated that there is confusion about certain information required to be reported in Section IV of Form G-37/G-38 as well as the attachment page to the

form. The proposed rule change would amend Rule G-38 to remove the separate references to the consultant's company name from the requirements regarding the consultant agreement, the disclosure to issuers, and the disclosure to the Board. In addition, the proposed rule change would remove the requirement in Rule G-8 for dealers to maintain a separate record of the consultant's company name. The proposed rule change would also amend Rules G-8(a)(xviii)(A) and G-38(d) and (e) to add the phrase "pursuant to the Consultant Agreement" after the consultant's name.⁵ The proposed rule change would also revise the formats of Section IV of Form G-37/G-38 and the attachment page to state "Name of Consultant (pursuant to Consultant Agreement)" and delete the reference to the "Consultant Company Name." Thus, a dealer would provide the name of an individual, if the consultant is an individual, or of a company, if the consultant is a company, depending upon whether the dealer has entered into a consultant agreement with an individual or a company.

Another area addressed by the proposed rule change concerns the role of the consultant. Pursuant to Rule G-38, a dealer is required to include within the consultant agreement the role of the consultant, to disclose this role to the issuer and to the Board and, pursuant to Rule G-8, to maintain a record of the role. The Instructions for Completing and Filing Form G-37/G-38 state that, in describing a consultant's role, a dealer should include the state or geographic area in which the consultant is working on behalf of the dealer. In addition, the Board issued a Question and Answer notice on Rule G-38 in which it stated that dealers must include the state or geographic area in which the consultant is working on behalf of the dealer.⁶

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C)⁸ of the Act. Section 15B(b)(2)(C) of the Act requires,

among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should assist brokers, dealers and municipal securities dealers with complying with their obligations under MSRB Rules G-37/38 and Form G-37/38. Specifically, the Commission believes that the proposed rule change should make clear whether the individual consultant's or the consultant company's name must be disclosed on Form G-37/38. Under the proposed rule change a dealer must review its consultant agreement to determine whether its consultant is an individual or a company. If the consultant agreement is with an individual, then only the individual's name need be reported on the form and not a company name. Conversely, if the consultant agreement is with a company, only the company's name need be reported and not an individual's name. The Commission believes that deleting from Rule G-38 and Form G-37/38 references to "consultant company name" will eliminate existing ambiguities resulting from the requirement that information regarding both an individual and a company be provided.

In addition, the Commission believes that amending Rules G-8(a)(xviii)(A) and G-38(d)(e) to add the phrase "pursuant to the Consultant Agreement" after the consultant's name will make clear that dealers are to look to their consultant agreement in determining whether the consultant is an individual or a company. Furthermore, the Commission believes that revising Rules G-38 and G-8 to explicitly require reporting of the state or geographic area in which a consultant is working on behalf of a dealer will ensure that the Board receive this information that is currently required by the Instructions to Form G-37/38.

Finally, the Commission notes that pursuant to recent amendments to Rules G-38, G-8, and G-37,⁹ If an individual is a consultant, the individual will relay to the dealer his or her reportable political contributions, reportable political party payments, and the reportable contributions and reportable payments of any political action committee ("PAC") controlled by the

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Board submitted a new Form 19b-4, which replaced the original filing ("Amending No. 1"). Specifically, Amendment No. 1 amended MSRB Rules G-38 and G-8 to clarify that the name of the consultant is obtained from the consultant agreement. Amendment No. 1 also revised the filing to include the statutory basis for the proposed rule change.

⁴ Securities Exchange Act Release No. 43568 (Nov. 15, 2000), 65 FR 70371.

⁵ See Amendment No. 1, *supra* note 3.

⁶ See Rule G-38 Question and Answer number 1 dated November 18, 1996, *MSRB Rule Book* (January 1, 2000) at 210. The Rule G-38 Questions and Answers are also posted on the Board's web site at www.msrb.org.

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

⁸ 15 U.S.C. 78o-4(b)(2)(C).

⁹ See Securities Exchange Act Release No. 42205 (December 7, 1999), 64 FR 69808 (December 14, 1999).

individual. If the consultant is a company, the company will relay its reportable contributions and reportable payments to the dealer, as well as those made by any partner, director, officer or employee of the consultant who communicates with issuers to obtain municipal securities business on behalf of the dealer, and any PAC controlled by the consultant or any partner, director, officer or employee of the consultant who communicates with issuers to obtain municipal securities business or behalf of the dealer. Dealers will report this contribution and payment information to the Board on Form G-37/G-38 by contributor category (*i.e.*, company, individual, company controlled PAC, or individual controlled PAC).

IV. Conclusion

It is Therefore Ordered, pursuant to Section 119(b)(2)¹⁰ of the Act, that the proposed rule change, as amended (SR-MSRB-00-02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-2849 Filed 2-1-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43894; File No. SR-NASD-01-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Dual Reporting of Transactions in Certain Fixed Income Securities

January 26, 2001.

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 January 5, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 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 NASD proposes to amend NASD Rule 6230(b) to require trade reports in transactions in eligible fixed income securities between two members to be filed with the NASD by each member. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6200. TRADE REPORTING AND COMPARISON ENTRY SERVICE (TRACE)

* * * * *

6230. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction Trade data input obligations are as follows:

(1) In transactions between two members, *both members* [the member representing the sell-side] shall submit a trade report to TRACE;

(2) In transactions involving a member and a non-member, including a customer, the member shall submit a trade report to TRACE.

(c)-(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 NASD 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 may be examined at the places specified in Item IV below. The NASD 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

In conjunction with the Commission's approval of rules governing the NASD's Trade Reporting and Comparison Entry Service ("TRACE Rules" or "Rule 6200 Series") (SR-NASD-99-65),³ NASD is

³ On January 23, 2001, the Commission approved NASD rules 6210 through 6260 relating to reporting and dissemination of transaction information on eligible fixed income securities, and granted accelerated approval to Amendment No. 4 to those rules. Securities Exchange Act Release No. 43873 (January 23, 2001).

proposing an amendment to NASD Rule 6230(b). The proposed amendment would require a member to submit a trade report to the NASD if the member is either the buy- or the sell-side of a transaction in an eligible fixed income security under the Rule 6200 Series. Rules 6230(b), as approved, currently requires only the member who represents the sell-side to submit a trade report to the NASD.

The Association is proposing the amendment to Rule 6230(b) to provide for reporting by both the buy- and sell-side of the transaction ("dual trade reporting") in order to improve the quality of the transaction data for surveillance purposes. The amendment is proposed in lieu of previously proposed rule 6231, which the Association deleted from SR-NASD-99-65 when it filed Amendment No. 4 thereto.⁴ Deleted rule 6231 would have required that both sides to a trade submit to the NASD duplicate copies of the transaction information they submitted to their registered clearing agency for purposes of clearance and settlement of their trades. The Association deleted proposed rule 6231 from the rule 6200 Series in response to industry comments. Although the Association deleted from SR-NASD-99-95 proposed rule 6231 based on industry comments that the proposed rule was overly burdensome, for regulatory purposes the NASD represents that it must receive reports from both sides of trades in eligible fixed income securities. As a result, the NASD is proposing to amend rules 6230(b) because the amended provision would provide the NASD with the information it believes is necessary to conduct market surveillance. In addition, the proposed revision to rule 6230(b) is believed to be less burdensome to the industry than previously proposed rule 6231 for the following reason. As previously structured, the TRACE rules would have required members to engage in two software development efforts—one to comply with the requirement to report sell-side information within one hour to the Association in rule 6230 and another to meet the requirements of Rule 5231 for the submission of clearing information at the close of business. The proposed amendment to rule 6230(b) will allow members to engage in one software development effort to comply with TRACE requirements.

Although the Association's proposal will require the dual real-time reporting of sell-side and buy-side trade

⁴ The NASD filed Amendment No. 4 to SR-NASD-99-65 on January 5, 2001.