

statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, for 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 Regulatory Element is a three and one-half hour computer-based training program that previously had only been administered to registered persons at the location of an outside vendor. Rule G-3(h)(i)(A)(1) requires that each registered person, who is not exempt from the rule, complete the Regulatory Element on the occurrence of his or her second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person who has not completed the Regulatory Element within the prescribed time periods is deemed to be inactive until the Regulatory Element has been fulfilled, and may not conduct, or be compensated for, activities requiring a securities registration.

The Securities Industry/Regulatory Council on Continuing Education ("Council") is responsible for the oversight of the continuing education program for the securities industry. The Council's duties include recommending and helping to develop specific content and questions for the Regulatory Element, and minimum core curricula for the Firm Element. The Council is comprised of 14 representatives from a broad cross section of broker/dealers and six self-regulatory organizations, including the MSRB. The Council, working with representatives from the North American Securities Administrators Association, and with the knowledge of the Council's Securities and Exchange Commission liaisons, has developed a model under which brokers, dealers and municipal securities dealers may deliver the Regulatory Element computer-based training on firm premises. The model requires that the broker, dealer or municipal securities dealer meet certain conditions for in-firm delivery relating to computer hardware and to the security of the training delivery environment. The proposed rule change encapsulates the delivery requirements as specified by the Council. Brokers, dealers and municipal securities dealers

of any size may take advantage of the in-firm delivery procedures.

2. Statutory Basis

The Board believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Securities Exchange Act of 1934 ("Act"), which provides 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 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 will facilitate registered persons satisfying their obligations to meet the Regulatory Element of the continuing education requirement.

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

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealer.

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.

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 self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-2001-04 and should be submitted by July 19, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44459; File No. SR-MSRB-2001-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G-37, on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G-38, on Consultants

June 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,¹ notice is hereby given that on June 7, 2001, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MSRB-2001-02) as described in Items, I, II, and III 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 has filed with the Commission a proposed rule change consisting of a notice of interpretation concerning rules G-37, on political contributions and prohibitions on

² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4.

municipal securities business, and G-38, on consultants. The text of the proposed rule change is set forth below. The new text is italicized and underlined.

Question and Answer Notice: Rules G-37 and G-38

Bank Affiliates: Individuals as Municipal Finance Professionals or Consultants

Q: In a Question and Answer Notice relating to rule G-38 dated May 20, 1998, the MSRB discussed a scenario in which a bank and its employees communicate with an issuer on behalf of an affiliated broker, dealer or municipal securities dealer (a "dealer") to obtain municipal securities business for that dealer in return for certain "credits." These credits, which do not involve any direct or indirect cash payments from the dealer to the bank or its employees, are used for internal purposes to identify the source of business referrals. The MSRB observed that, even if there is no immediate transfer of funds or anything of value to an affiliate or individual employed by the affiliate, the referral credits would still be considered payment for purposes of rule G-38 if such credits eventually (e.g., at the end of the fiscal year) result in compensation to the affiliate or individual employed by the affiliate for referring municipal securities business to the dealer. The MSRB concluded that if the dealer or any other person eventually gives anything of value (e.g., makes a "payment") to the affiliate or individual based, even in part, on the referral, then the affiliate or individual is a consultant for purposes of rule G-38. Does this mean that in all cases where a bank's employee refers municipal securities business to an affiliated dealer, such bank employee is necessarily a consultant under rule G-38 rather than a municipal finance professional of the dealer under rule G-37?

A: No. The purpose of the Question and Answer Notice was to illustrate that the term "payment" as used in rule G-38 is not limited to cash payments but also includes anything of value, such as referral credits, that ultimately results in cash or non-cash compensation to the bank employee. The MSRB was not providing guidance as to whether such bank employee should be considered a consultant rather than a municipal finance professional of the dealer. As the MSRB noted in footnote 1 to the Question and Answer Notice, municipal finance professionals are excluded from the definition of consultant. If a dealer has an arrangement whereby referral credits are given to an employee of a bank affiliate in exchange for a referral of municipal securities business, the dealer should first determine whether the bank employee is a municipal finance professional of the dealer. As a threshold question, the dealer must determine whether such bank employee is a person associated with the dealer within the meaning of the Securities Exchange Act of 1934, as amended the "Exchange Act").² If

the bank employee is an associated person of the dealer and has solicited municipal securities business on behalf of the dealer, the employee would be a municipal finance professional of the dealer subject to the provisions of rule G-37, regardless of whether such employee has received a referral credit or any other payment.³ Such employee, as a municipal finance professional of the dealer, is excluded from being a consultant of the dealer under rule G-38. If the bank employee is not an associated person of the dealer and has received such referral credits as a result of a solicitation of municipal securities business for the dealer, the employee would be a consultant of the dealer subject to the provisions of rule G-38.

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 texts 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

(a) Since adoption of rules G-37 and G-38, the MSRB has received numerous inquiries concerning the application of these rules. In order to assist the municipal securities industry in understanding and complying with the provisions of the rules, the MSRB has published a series of interpretive notices, which set forth, in question-and-answer format, general guidance on rules G-37 and G-38.

On May 20, 1998, the Commission approved an interpretive notice of the MSRB relating to rule G-38.⁴ This question-and-answer notice provided guidance regarding the meaning of the term payment under rule G-38 in the context of the granting of referral credits to an employee of a bank in exchange for the referral of municipal securities business to a dealer affiliated with the

Section 3(a)(18) of the Exchange Act or "person associated with a municipal securities dealer" under Section 3(a)(32) of the Exchange Act should be addressed to staff of the Securities and Exchange Commission.

³ The definition of municipal finance professional in rule G-37 is not dependent upon whether the associated person has received payment in exchange for the solicitation of municipal securities business.

⁴ Securities Exchange Act Release No. 40014 (May 20, 1998), 63 FR 29282 (May 28, 1998).

bank. The MSRB made clear that, even if there is not immediate transfer of funds or anything of value to an affiliate of a dealer or an individual employed by such affiliate, the referral credits would still be considered payment for purposes of rule G-38 if the credits eventually result in compensation to the affiliate or individual for referring municipal securities business to the dealer.

The MSRB recently has learned that some members of the municipal securities industry may have misunderstood the guidance provided by this prior question-and-answer notice. Some industry participants appear to believe that the MSRB has determined that an employee of a bank that refers municipal securities business to a dealer affiliated with such bank would necessarily be considered a consultant of the dealer under rule G-38 rather than a municipal finance professional of the dealer under rule G-37. This was not the intent of the prior interpretation, which focused solely on whether referral credits could be considered payment for purposes of rule G-38. The interpretation did not seek to analyze the further factors that must be considered in determining whether an individual should be considered a municipal finance professional or a consultant. As a result, the MSRB has determined that it is necessary to provide clarification of the prior question-and-answer notice and to provide further guidance on the factors to be considered in determining whether an employee of an affiliate of a dealer that makes a referral of municipal securities business to the dealer is a consultant under rule G-38 or a municipal finance professional under rule G-37.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires that the MSRB's rules

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 in that it provides guidance to dealers in complying with existing MSRB rules.

² Questions regarding the scope of the term "person associated with a broker or dealer" under

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

The MSRB 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 since it would apply equally to all dealers.

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.

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

The MSRB has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing MSRB rule under section 19(b)(3)(A)(i) of the Act,⁵ and subparagraph (f) of Rule 19b-4, thereunder.⁶ At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

V. 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. 20549-0609. 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 inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No.

SR-MSRB-2001-02 and should be submitted by July 19, 2001.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44465; File No. SR-NYSE-2001-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rules 104 and 1100 Relating to Trading of ETFs

June 22, 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 June 15, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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.

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

The proposed rule change consists of an amendment to NYSE Rule 104 to facilitate trading in Exchange Traded Funds ("ETFs"), and amendments to Rule 1100 to clarify that rules relating to Investment Company Units apply to such securities traded on the basis of unlisted trading privileges ("UTP"), and to authorize the Exchange to close trading in an ETF at 4:05 p.m. when trading in a related futures contract has closed at that time on the last trading day of the month. Text of the proposed rule change follows. Additions are italicized; deletions are bracketed.

Dealings by Specialists

Rule 104

No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he, his member organization or any other member, allied member, or approved

person, (unless an exemption with respect to such approved person is in effect pursuant to Rule 98) in such organization or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as odd-lot dealer in such security.

.10 Regular Specialists

* * * * *

(7) The requirement to obtain Floor Official approval for transactions for a specialist's own account contained in subparagraphs (5)(i)(A), (B) and (6)(i)(A) above shall not apply to transactions effected for the purpose of bringing the price of an investment company unit (the "unit"), as that term is defined in Section 703.16 of the Listed Company Manual, into parity with the value of the index on which the unit is based, [or] with the net asset value of the securities comprising the unit[.], or with a futures contract on the value of the index on which the unit is based. Nevertheless such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.

Rule 1100

Scope

(a) The provisions of this Rule 1100 apply only to "Investment Company Units", as defined and used in Para. 703.16 of the Listed Company Manual. *This term shall also mean and apply to securities which fit within said definition but are admitted to dealings by the Exchange on an unlisted trading privileges basis.* Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of the Constitution, all other Exchange Rules and policies shall be applicable to the trading of Investment Company Units on the Exchange. Pursuant to Exchange Rule 3 ("Security"), Investment Company Units are included within the definition of "security" or "securities" as those terms are used in the Constitution and Rules of the Exchange.

* * * * *

Hours of Trading

(e) Any series of Investment Company Units so designated by the Exchange may be traded on the Exchange until 4:15 p.m. each business day. *The Exchange may close trading at an early time to coincide with the close of trading in a related futures contract on the last business day of the month, or any other day when trading in a related futures contract closes earlier than 4:15 p.m.*

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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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 C.F.R. 240.19b-4(f).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.