

factors set forth in Rule 6.3, which are the same factors currently considered by the Board in a suspension decision. This proposed approach is consistent with the procedure for index options under Rule 24.7, where trading halts or suspensions do not require action by the Board.

In addition, the proposed rule change would make clear that trading may resume only upon a determination by two Floor Officials that such a resumption is in the interests of a fair and orderly market. The present form of Rule 6.3(b) allows trading to resume when two Floor Officials determine either that the conditions that led to the halt no longer are present or that a resumption of trading would serve the interests of a fair and orderly market. The Exchange believes that taken literally, this would enable trading to resume if the conditions that led to the halt no longer are present, even if a resumption of trading would be contrary to the interests of a fair and orderly market, an interpretation that would conflict with the CBOE's practice and would be contrary to the policies under the Act. Accordingly, the Exchange believes that the proposed rule change would make clear that: (1) Option trading may resume after a halt if, and only if, two Floor Officials determine that such a resumption would be in the interests of a fair and orderly market; and (2) the fact that the conditions leading to the halt no longer are present is just one of the factors that Floor Officials may consider in determining whether the interests of a fair and orderly market would be served by a resumption of trading. The CBOE notes that the Exchange has proposed similar changes to Rule 24.7(b), which governs the resumption of trading after a trading halt in index options.³

Finally, because of the deletion of Rule 6.4, the Exchange believes that it also is necessary to make conforming deletions of certain non-substantive references to trading suspensions under Rule 6.4 that appear in Rule 21.12 and Interpretation .02 of Rule 21.19 (concerning government securities options) and in Rule 23.8 (concerning interest rate option contracts).

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁴ in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest by enabling Floor Officials to evaluate and to consider market conditions and

circumstances and to halt trading for as long as necessary in the interests of a fair and orderly market.

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

CBOE does not believe that the proposed rule will impose any burden on competition.

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

No written comments were solicited or received 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 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 persons are invited to submit written data, views and arguments concerning the foregoing. 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 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-97-35 and should be submitted by September 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-22184 Filed 8-20-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38935; File No. SR-MSRB-97-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Its Arbitration Code

August 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1997,¹ the Municipal Securities Rulemaking Board ("Board" or "MSRB") 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 self-regulatory organization. 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 Board is filing a proposed rule change to amend Rule G-35, the Board's Arbitration Code. The proposed rule change would create two sections: Section 37 would state that the Board will not accept any new arbitration claims filed on or after January 1, 1998; and Section 38 would provide that, as of January 1, 1998, every bank dealer (as defined in Rule D-8) shall be subject to the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD") for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. New Section 38 would further provide that each bank dealer shall be subject to, and shall abide by, the NASD's Code of Arbitration Procedure as if the bank dealer were a "member" of the NASD.

⁵ 17 CFR 200.30-3(a)(12).

¹ The MSRB filed Amendment No. 1 to the proposed rule change on August 14, 1997, the substance of which has been incorporated into the notice. See letter from Jill C. Funder, Assistant General Counsel, MSRB, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated August 14, 1997.

³ See File No. SR-CBOE-97-36.

⁴ 15 U.S.C. 78f(b)(5).

The text of the proposed rule change is as follows, with additions in italics:

Arbitration

Rule G-35. Every broker, dealer and municipal securities dealer shall be subject to the Arbitration Code set forth herein.

Arbitration Code

Section 1 through Section 36. No change.

Section 37. Arbitration Claims Filed On or After January 1, 1998. The Board will not accept any new arbitration claims filed on or after January 1, 1998.

Section 38. Arbitration Involving Bank Dealers. As of January 1, 1998, every bank dealer (as defined in rule D-8) shall be subject to the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD") for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. For purposes of this rule, each bank dealer shall be subject to, and shall abide by, the NASD's Code of Arbitration Procedure as if the bank dealer were a "member" of the NASD.

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 Board 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 Board 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

The Board's arbitration program, which is limited to the resolution of disputes involving municipal securities, has been in effect since December 1978. The Board's caseload grew steadily for a time; for example, 21 cases were received in 1980, 82 in 1986, and 115 in 1988. Between 1978 and 1993, the NASD automatically transferred to the Board's arbitration program any claims received involving municipal securities, and until approximately 1993 the majority of the Board's cases were

received in this manner.² In 1993, the NASD amended its arbitration code to require a customer's consent before it could transfer a case to another self-regulatory organization ("SRO"). The practical effect of this amendment has been to virtually halt the transfer of municipal cases to the Board's arbitration program because customers choose to remain at the NASD. Consequently, the Board's caseload has declined dramatically from 115 cases received in 1988 to 10 cases received in 1996. For 1997, the Board has thus far received two cases.

The Board believes that its declining caseload makes it difficult to justify the cost of continuing to operate the arbitration program. Accordingly, the Board has determined that, effective January 1, 1998, it will no longer accept any new claims filed with its arbitration program. The Board will, however, continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but will discontinue its arbitration program when all such cases have been closed.³

The Board notes that, currently, any customer or securities dealer with a claim, dispute, or controversy against a dealer involving its municipal securities activities may submit that claim to the arbitration forum of any SRO of which the dealer is a member, including the NASD. Bank dealers, however, are unique in that they are subject to the Board's rules but are not members of any other SRO. In light of the Board's decision not to accept any new arbitration claims on or after January 1, 1998, it is necessary to amend Rule G-35 to state this and to provide an alternative forum for claims involving the municipal securities activities of bank dealers. The proposed rule change accomplishes this by subjecting every bank dealer, as of January 1, 1998, to the NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. In addition, the proposed rule change requires that bank dealers abide by the NASD's Code just as if they were "members" of the NASD for purposes of arbitration.

² The NASD also transferred cases (other than those involving municipal securities) to other self-regulatory organizations ("SROs"), such as the New York Stock Exchange and the American Stock Exchange, if the particular claim arose out of a transaction in that SRO's market.

³ At such time, the Board will submit a filing to the Commission to delete sections 1 through 36 of Rule G-35, as well as new Section 37, and to rescind Rule A-16 on arbitration fees and deposits.

The Board notes that, pursuant to the proposed rule change, the enforcement mechanism for bank dealers would not be altered; the bank regulatory agencies (e.e., the Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation) would continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration. Thus, for example, a bank dealer's failure to pay an arbitration award rendered pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G-35; since it is that rule, as amended, that subjects bank dealers to the NASD's Code. Similarly, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G-35. The NASD would notify the Board of any such violations and the Board, in turn, would contact the appropriate bank regulatory agency.

2. Statutory Basis

The Board believes that the proposed rule change is consistent with Sections 15B(b)(2) (C) and (D) of the Act, which provide, respectively, that the Board's rules shall:

be designed * * *, in general, to protect investors and the public interest * * *. [and if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities * * *].

As discussed above, the Board deems it no longer appropriate to operate an arbitration program. The Board believes that the proposed rule change provides for the protection of investors and the public interest, particularly those public investors who wish to pursue arbitration claims against bank dealers in connection with their municipal securities activities. The proposed rule change ensures that there is an arbitration forum available for those claims.

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 since the proposed rule change would make all bank dealers subject to the NASD's Code of Arbitration Procedure in connection with their municipal securities activities. Non-bank dealers already are subject to this Code by virtue of being NASD members.

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

In September 1996, the Board published a notice expressing its concern over the costs of operating the arbitration program in light of the decreasing number of cases filed with the Board.⁴ The Board stated that the decline in its caseload makes it difficult to justify the cost of continuing to operate the arbitration program, and that it was considering discontinuing its arbitration program. The Board requested comment on the impact that such action would have on the public and the industry, and specifically requested comment on what effect, if any, the elimination of its arbitration program would have on bank dealers who are not NASD members.

In response to its request, the Board received comment letters from a dealer and from an individual who serves as an arbitrator for the Board. The dealer expressed its concern that arbitrators serving in other SRO arbitration programs do not have sufficient knowledge of the municipal securities industry. In an attempt to address this concern, the Board, in the next few months, plans to forward its list of arbitrators to the NASD.

With regard to bank dealers, the dealer stated that the Board's program should not be eliminated until an arbitration forum is established for these dealers, and suggested that the Board require bank dealers to use the NASD's arbitration program for resolving disputes involving municipal securities. The proposed rule change accomplishes this.

The other commentator expressed his belief that elimination of the Board's program will not impair the industry's arbitration process.

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

Within 35 days of the 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 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. 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 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 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 Board. All submissions should refer to File No. SR-MSRB-97-04 and should be submitted by September 11, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38936; File No. SR-NASD-97-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Rule 2320(g) To Provide Authority to the Staff of NASD Regulation To Grant Exemptions From Such Provision

August 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1997, 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 self-regulatory organization. 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 Rule 2320(g) to provide authority to the staff of NASD Regulation to grant exemptions from such provision. Below is the text of the proposed rule change. Proposed new language is in *italics*.

Rule 2320. Best Execution and Interpositioning

(g) (1) In any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security (as defined in the Rule 6700 Series), a member or person associated with a member, shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(g)(2) *The staff, upon written request, after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this rule, the protection of investors, and the public interest. Any decision whether to grant such an exemption may be appealed to the National Business Conduct Committee.*

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 self-regulatory organization 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 self-regulatory organization 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

NASD Rule 2320(g) ("The Three Quote Rule" or "Rule") originally was adopted on May 2, 1988¹ as an amendment to the NASD's best execution interpretation ("Interpretation of the Board of Governors—Execution of

¹ See Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

⁴ MSRB Reports, Vol. 16, No. 3 (Sept. 1996) at 25.