

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. 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-97-12 and should be submitted by January 26, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-22 Filed 1-4-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No 34-40848; File No. SR-MSRB-98-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of an Interpretative Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers

December 28, 1998.

On November 20, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-98-12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board 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 rule of the Board under Section 19(b)(3)(A)³ of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. 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 herewith a proposed rule change consisting of an interpretive notice regarding electronic delivery and receipt of information by brokers, dealers and municipal securities dealers (the "Notice"). The interpretive notice is as follows:

Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers

On May 9, 1996, the Commission issued an interpretative release expressing its views on the use of electronic media for a delivery of information by, among others, brokers and dealers.⁴ The Commission stated that brokers, dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media within the framework established in the Commission's October 1995 interpretive release on the use of electronic media for delivery purposes.⁵ The Commission also indicated that an electronic communication from a customer to a broker or dealer generally would satisfy the requirements for written consent or acknowledgment under the federal securities laws.

The Board is publishing this notice to address the use of brokers, dealers and municipal securities dealers ("dealers") of electronic media to a deliver and receive information under Board rules.⁶ The Board

will permit dealers to transmit documents electronically that they are required or permitted to furnish to customers under Board rules provided that they adhere to the standards set forth in the Commission Releases and summarized below.⁷ Dealers also may receive consents and acknowledgments from customers electronically in satisfaction of required written consents and acknowledgments. Furthermore, the Board believes that the standards applied by the Commission by communications with customers should also apply to communications among dealers and between dealers and issuers. However, although it is the Board's goal ultimately to permit dealers to make required submissions of materials to the Board electronically if possible, this notice does not affect existing requirements for the submission of materials to the Board, its designees and certain other entities to which information is required to be delivered under Board rules.⁸

10, 1997), 62 FR 32848 (June 17, 1997) (Memo of the New York Stock Exchange).

⁷ The Board also reminds dealers that the Commission indicated in the 1996 Release that dealers may fulfill their obligation to deliver to customers, upon request, preliminary official statements and final official statement in connection with primary offering of municipal securities subject to Commission Rule 15c2-12 by electronic means, subject to the guidelines set forth in the 1996 Release. See 1996 Release, *supra* note 4 at n. 47.

⁸ For example, this notice does not apply to any requirements that dealers supply the Board with written information pursuant to Board Rules A-12, A-14, A-15, G-36, G-37 and G-38. The Board has begun the planning process for electronic submission or information required under Rule A-15 and of Form G-37/G-38 under Rules G-37 and G-38. At such time as electronic submission becomes available, the Board will publish notice thereof and of the procedures to be used for such submission. Although submission of Forms G-36(OS) and G-36(ARD) under Rule G-36 could also be made electronically by means similar to those which the Board may develop for Form G-37/G-38, such electronic submission is complicated by the requirement that Forms G-36(OS) and G-36(ARD) be accompanied by an official statement or advance refunding document, as appropriate. Given the current debate and lack of consensus among the various sectors of the municipal securities industry regarding electronic formatting of disclosure materials, and since the Board does not have the authority to dictate the format of issuer documents, the Board believes that any further action regarding electronic submissions under Rule G-36 should await resolution of these issues. Finally, the Board does not at this time anticipate permitting electronic submission of information required under Rules A-12 and A-14 since such information must be accompanied by payment of certain required fees.

Electronic submission of information under Rule G-14 will continue to be governed by Rule G-14 and associated Transaction Reporting Procedures. In addition, this notice does not alter the current submission standards applicable to the Board's Continuing Disclosure Information (CDI) System of the Municipal Securities Information Library® (MSIL®) system. The Municipal Securities Information Library and MSIL are registered trademarks of the Board.

Furthermore, submission of information to the Board's designees or certain other designated entities under Board rules must continue to be done in accordance with the procedures established by such designees or other entities. Board rules in

¹ 15 U.S.C. 28s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Act Release No. 7288, Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (the "1996 Release").

⁵ See Securities Act Release No. 7233, Exchange Act Release No. 36345 (October 6, 1995), 60 FR 53458 (October 13, 1995) (the "1995 Release" and, together with the 1996 Release, the "Commission Releases").

⁶ The Commission has approved similar interpretive notices filed by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. See Securities Exchange Act Release No. 39356 (November 25, 1997), 62 FR 64421 (December 5, 1997) (Notice of Members of the National Association of Securities Dealers, Inc.); Securities Exchange Act Release No. 38731 (June

¹⁹ 17 CFR 200.30-3(a)(12).

Dealers are urged to review the Commission Releases in their entity to ensure that they comply with all aspects of the Commission's electronic delivery requirements. Although the examples provided in the Commission Releases are based on Commission rules, the examples nonetheless provide important guidance as to the intended application of the standards set out by the Commission with respect to electronic communications.

Electronic Communications From Dealers to Customers

General. According to the standards established by the Commission, dealers may use electronic media to satisfy their delivery obligations to customers under Board rules, provided that the electronic communication satisfies the following principles:⁹

1. Notice—The electronic communication should provide timely and adequate notice to customers that the information is available

which such requirements currently appear include Rule G-7 (with respect to information required to be filed with the appropriate enforcement agencies), G-12 and G-15 (with respect to information to be submitted to registered clearing agencies and registered securities depositories), G-26 (with respect to customer account transfer instructions (other than Form G-26) required by registered clearing agencies), G-34 (with respect to information to be submitted to the Board's designee for assignment of CUSIP numbers and to registered securities depositories) and G-37 (with respect to application to the appropriate enforcement agencies for exemptions from the ban on municipal securities business).

⁹ Dealers that structure their deliveries in accordance with the principles set forth in this notice can be assured, except where otherwise noted, that they have satisfied their delivery obligations under Board rules. However, as the Commission stated in the 1995 Release, the three enumerated principles are not the only factors relevant to determining whether the legal requirements pertaining to delivery of documents have been satisfied. Consistent with the Commission's view, the Board believes that, if a dealer develops a method of electronic delivery that differs from the principles discussed herein, but provides assurance comparable to paper delivery that the required information will be delivered, that method may satisfy delivery obligations. See 1995 Release, *supra* note 5 at n.22 and accompanying text. For example, a dealer can satisfy its obligation to send a confirmation to a customer under Rule G-15 by electronic means in a manner that meets the principles set forth in this notice. In addition, dealers may continue to deliver confirmations electronically through the OASYS Global system established by Thomson Financial Services, Inc. on the conditions described in the Board's Notice Concerning Use of the OASYS Global Trade Confirmation System to Satisfy Rule G-15(a), dated June 6, 1994, without specifically complying with the principles described in this notice. See MSRB Reports, Vol. 14, No. 3 (June 1994) at 37. See also 1996 Release, *supra* note 4 at n.38; 1995 Release, *supra* note 5 at n.12. Also, Rule G-29 provides that dealers must make available to customers for examination promptly upon request a copy of the Board's rules required to be kept in their offices. Dealers may continue to comply with the requirement by giving customers access to the rules either in printed form or by viewing the rules on screen from the Board's Internet web site (www.msrb.org) or from software products produced by other companies. See Interpretive Notice on Availability of Board Rules, dated May 20, 1998, in MSRB Reports, Vol. 18, No. 2 (August 1998) at 37.

electronically.¹⁰ Since certain forms of electronic delivery may not always provide a likelihood of notice that recipients have received information that they may wish to review, dealers should consider supplementing such forms of electronic communication with a separate communication, providing notice similar to that provided by delivery in paper through the postal mail, that information has been sent electronically that the recipients may wish to review.¹¹

2. Access—Customers who are provided information through electronic delivery should have access to that information comparable to the access that would be provided if the information were delivered in paper form.¹² The use of a particular electronic medium should not be so burdensome that intended recipients cannot effectively access the information provided.¹³ A recipient should have the opportunity to retain the information through the selected medium (e.g., by downloading or printing the information) or have ongoing access equivalent to personal retention.¹⁴ Also, as a matter of policy, the Commission believes that a person who has a right to receive a document under the federal securities laws and chooses to receive it electronically should be provided with a paper version of the document upon specific request or if consent to receive documents electronically is revoked.¹⁵

3. Evidence to Show Delivery—Dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities

laws. Dealers should consider the need to establish procedures to ensure that applicable delivery obligations are met, including recordkeeping procedures to evidence such satisfaction.¹⁶ Such procedures should also be designed to ensure the integrity and security of information being delivered so as to ensure that it is the information that was intended to be delivered.¹⁷ Dealers may be able to evidence satisfaction of delivery obligations, for example, by:

(1) obtaining the intended recipient's informed consent¹⁸ to delivery through a specified electronic medium and ensuring that the recipient has appropriate notice and access;

(2) obtaining evidence that the intended recipient actually received the information, such as by an electronic mail return-receipt¹⁹ or by confirmation that the information was accessed, downloaded, or printed; or

(3) disseminating information through certain facsimile methods (e.g., faxing information to a customer who has requested the information and has provided the telephone number for the fax machine).

Personal Financial Information. The Commission has noted, and the Board agrees, that special precautions are appropriate when dealers are delivering information to customers that is specific to that particular customer's personal financial information, including but not limited to information contained on confirmations and account statements.²⁰ In transmitting such personal financial information, dealers should consider the following factors:

1. Confidentiality and Security—Dealers sending personal financial information

¹⁰ See 1996 Release, *supra* note 4 at n.20 and accompanying text.

¹¹ See 1996 Release, *supra* note 4 at n.21 and accompanying text; 1995 Release, *supra* note 5 at n.23 and accompanying text. The Commission notes, for example, that if information is provided by physically delivering material (such as a diskette or CD-ROM) or by electronic mail, such communication itself generally should be sufficient notice. However, if information is made available electronically through a passive delivery system, such as an Internet web site, separate notice would be necessary to satisfy the delivery requirements unless the dealer can otherwise evidence that delivery to the customer has been satisfied. See 1996 Release, *supra* note 4 at n.21.

¹² The Commission states that, regardless of whether information is delivered in paper form or by electronic means, it should convey all material and required information. For example, if a paper document is required to present information in a certain order, then the information delivered electronically should be in substantially the same order. See 1996 Release, *supra* note 4 at n.14 and accompanying text.

¹³ The Commission notes, for example, that if a customer must proceed through a confusing series of ever-changing menus to access a required document so that it is not reasonable to expect that access would generally occur, this procedure would likely be viewed as unduly burdensome. In that case, the Commission would deem delivery not to have occurred unless delivery otherwise could be shown. See 1995 Release, *supra* note 5 at n.24.

¹⁴ See 1996 Release, *supra* note 4 at n.22 and accompanying text; 1995 Release, *supra* note 5 at ns.25-26 and accompanying text.

¹⁵ See 1996 Release, *supra* note 4 at n.17 and accompanying text, and 1995 Release, *supra* note 5 at n.27 and accompanying text.

¹⁶ See 1996 Release, *supra* note 4 at n.23; 1995 Release, *supra* note 5 at n.22 and n.28 and accompanying text. The Board is of the view that dealers that choose to deliver information to customers electronically should consider establishing systems and procedures for providing paper copies or using alternate electronic means in a timely manner should the primary electronic media fail for any reason.

¹⁷ See 1996 Release, *supra* note 4 at n.25 and accompanying text; 1995 Release, *supra* note 5 at n.22 and accompanying text. Dealers also should consider the need for systems and procedures to deter or detect misconduct by firm personnel in connection with the delivery of information, whether by electronic or paper means. See 1996 Release, *supra* note 4 at n.16 and accompanying text.

¹⁸ In order for a consent to be an informed consent, the Commission has stated that the consent should specify the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, describe the information that will be delivered using such means, and disclose the potential for the customer to incur costs in accessing the information. See 1996 Release, *supra* note 4 at n.23; 1995 Release, *supra* note 5 at n.29.

¹⁹ To the extent that material is distributed as an attachment to an electronic mail transmission, dealers must have a reasonable basis for believing that the attachment will in fact be transmitted along with the electronic mail transmission and that the attachment will be received by the recipient in an accessible format.

²⁰ In addition, the Board believes that other information that is privileged or confidential, regardless of whether such information is financial in nature, should be accorded the same precautions as are accorded personal financial information.

through electronic means or in paper form should take reasonable precautions to ensure the integrity, confidentiality, and security of that information. Dealers transmitting personal financial information electronically must tailor those precautions to the medium used in order to ensure that the information is reasonably secure from tampering or alteration.

2. *Consent.*—Unless a dealer is responding to a request for information that is made through electronic media or the person making the request specifies delivery through a particular electronic medium, the dealer should obtain the intended recipient's informed consent prior to delivering personal financial information electronically. The customer's consent may be made either by a manual signature or by electronic means.

Electronic Communications From Customers to Dealers

Consistent with the position taken by the Commission, dealers may rely on consents and acknowledgements received from customers by electronic means for purposes of Board rules. In relying on such communications from customers, dealers must be cognizant of their responsibilities to prevent, and the potential liability associated with, unauthorized transactions. In this regard, the Commission states, and the Board agrees, that dealers should have reasonable assurance that the communication from a customer is authentic.

Electronic Transmission of Non-Required Communications

The 1996 Release states that the above standards are intended to permit dealers to comply with their delivery obligations under federal securities laws when using electronic media. While compliance with the guidelines is not mandatory for the electronic delivery of non-required information that, in some cases, is being provided voluntarily to customers, the Board believes adherence to the guidelines should be considered, especially with respect to delivery of personal financial information.

Electronic Communications Among Dealers and Between Dealers and Issuers

The Board believes that the standards applied by the Commission to communications with customers should also apply to mandated communications among dealers and between dealers and issuers. Thus, a dealer that undertakes communications required under Board rules with other dealers and with issuers in a manner that conforms with the principles stated above relating to customer communications will have met its obligations with respect to such communications. In addition, a dealer may rely on consents and acknowledgements received from other dealers or issuers by electronic means for purposes of Board rule, provided that the dealer should have reasonable assurance that the communication from such other party is authentic. However, any Board rule that explicitly requires that a dealer enter into a written agreement with another party will continue to require that such agreement be in

written form.²¹ Financial information, as well as other privileged or confidential information, relating to another dealer or an issuer (or relating to another person or entity contained in a transmission between a dealer and another dealer or an issuer) should be transmitted using precautions similar to those used by a dealer in transmitting personal financial information to a customer.

Rules to Which This Notice Applies

Set forth below is a list of current Board rules to which dealers may apply the guidance provided in this notice. The Board believes that the list sets forth all of the rules that require or permit communications among dealers and between dealers and customers and issuers.²² The summaries provided of the delivery obligations under the listed rules is intended for ease of reference only and are not intended to be complete statements of all the requirements under such rules.

- Rule G-8, on books and records to be made by dealers, prohibits dealers from obtaining or submitting for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share or similar account without the customer's express written authorization.
- Rule G-10, on delivery of investor brochure, requires dealers to deliver a copy of the investor brochure to a customer upon receipt of a complaint by the customer.
- Rule G-11, on sales of new issue municipal securities during the underwriting period, requires certain communications between senior syndicate managers and other members of the syndicate.²³
- Rule G-12, on uniform practice, provides for confirmation of inter-dealer transactions and certain other inter-dealer communications.²⁴
- Rule G-15, on confirmation, clearance and settlement of transactions with customers, provides for confirmation of transactions with customers and the provision of additional information to customers upon request.²⁵
- Rule G-19, on suitability of recommendations and transactions and discretionary accounts, requires that dealers

obtain certain information from their customers in connection with transactions and recommendations and also receive customer authorizations with respect to discretionary account transactions.

- Rule G-22, on control relationships, requires certain disclosures from a dealer effecting a transaction for a customer in municipal securities with respect to which such dealer has a control relationship and customer authorization of such transaction with respect to discretionary accounts.

- Rule G-23, on activities of financial advisors, requires that, under certain circumstances, dealers acting as financial advisors to issuers provide various disclosures to issuers and customers and receive certain consents and acknowledgments from issuers.²⁶

- Rule G-24, on use of ownership information obtained in fiduciary or agency capacity, requires a dealer seeking to use for its own purposes information obtained while acting in a fiduciary or agency capacity for an issuer or other dealer to receive consents to the use of such information.

- Rule G-25, on improper use of assets, provides that put options and repurchase agreements will not be deemed to be guaranties against loss if their terms are provided in writing to customers with or on the transaction confirmation.

- Rule G-26, on customer account transfers, provides for written notice from customers requesting account transfers between dealers and the use of Form G-26 to effect such transfer.²⁷

- Rule G-28, on transactions with employees and partners of other municipal securities professionals, requires that a dealer opening an account for a customer who is an employee or partner of another dealer must provide notice and copies of confirmations to such other dealer and permits such other dealers to provide instructions for handling of transactions with such customer.

- Rule G-29, on availability of Board rules, provides that dealers must make available to customers for examination promptly upon request a copy of the Board's rules required to be kept in their offices.²⁸

- Rule G-32, on disclosures in connection with new issues, requires dealers selling new issue municipal securities to customers to deliver official statements²⁹ and certain other information by settlement and requires

²¹ For example, the written agreements required under Rules G-20(c), G-(23) C and G-38(b) must continue to be entered into in paper form.

²² Unless otherwise provided in connection with the adoption by the Board of any new rules or amendments to existing rules that require or permit communications among dealers and between dealers and customers, issuers, and others, the guidance provided in this notice would also apply to any such communications.

²³ Rule G-11 also requires that syndicate members furnish certain information to others, upon request. The Board believes that, solely for purposes of this requirement under Rule G-11, such information may be provided to others by electronic means so long as the standards established in this notice with respect to electronic deliveries to customers are met.

²⁴ See *supra* note 5 (regarding information to be submitted to registered clearing agencies and registered securities depositories).

²⁵ See *supra* note 5 (regarding information to be submitted to registered clearing agencies and registered securities depositories). See also *supra* 6 (regarding alternate electronic means previously reviewed by the Board).

²⁶ See *supra* note 18 and accompanying text (regarding the written agreement to be entered into between a dealer acting as financial advisor and the issuer).

²⁷ See *supra* note 5 (regarding the use of customer account transfer instructions other than Form G-26).

²⁸ See *supra* note 6 (regarding alternate electronic means previously reviewed by the Board).

²⁹ The Board believes that dealers must be particularly cautious in delivering official statements by electronic means since they may present special challenges in ensuring that they are received by customers and other dealers without material omissions or distortions in formatting (for example, tables in which data is more than negligibly misaligned) that may cause such materials not to meet the standard for electronically transmitted information comparable to information delivered in paper form. See *supra* note 9 and accompanying text.

selling dealers, managing underwriters and certain dealers acting as financial advisors to deliver such materials to dealers purchasing new issue municipal securities, upon request.³⁰

- Rule G-34, on CUSIP numbers and new issue requirements, requires underwriters to communicate information regarding CUSIP numbers and initial trade date to syndicate and selling group members.³¹

- Rule G-38, on consultants, requires dealers to provide certain information to issuers regarding consulting arrangements.³²

- Rule G-39, on telemarketing, prohibits certain telemarketing calls without the prior consent of the person being called.³³

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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 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section 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

On May 9, 1996, the Commission issued an interpretative release expressing its views on the use of electronic media for delivery of information by, among others, brokers and dealers.³⁴ The Commission stated that brokers, dealers and others may satisfy their delivery obligations under

federal securities laws by using electronic media as an alternative to paper-based media within the framework established in the Commission's October 1995 interpretive release on the use of electronic media for delivery purposes.³⁵ The Commission also indicated that an electronic communication from a customer to a broker or dealer generally would satisfy the requirements for written consent or acknowledgment under the federal securities laws.

The Board has determined to publish the Notice to address the use by dealers of electronic media to deliver and receive information under Board rules in a manner consistent with the Commission releases. Pursuant to the Notice, the Board will permit dealers to transmit documents electronically that they are required or permitted to furnish to customers under Board rules provided that they adhere to the standards set forth in the Commission Releases and summarized on the Notice. The Notice summarizes these standards, which address, among other things, notice, access and evidence to show delivery. In addition, the Notice discusses certain precautions that should be taken when using electronic means to communicate personal financial information.

The Notice also states that dealers may receive consents and acknowledgements from customers electronically in satisfaction of required written consents and acknowledgements. Furthermore, the Notice sets forth the board's belief that the standards applied by the Commission to communications with customers should also apply to communications among dealers and between dealers and issuers.

The Notice contains a list of current Board rules to which dealers may apply the guidance provided in the Notice. The Notice states that, unless otherwise provided in connection with the adoption by the Board of any new rules or amendments to existing rules that require or permit communications among dealers and between dealers and customers, issuers and others, the guidance provided in the Notice would also apply to any such communications.

The Board believes that use of electronic media to satisfy delivery requirements under Board rules will be beneficial to dealers customers and issuers, particularly when conducted in accordance with Commission standards.

The Board believes the proposed rule change is consistent with Section

15B(b)(2)(C) of the Act.³⁶ The Board believes that providing standards that allow dealers to effectively and efficiently deliver and receive required information under Board rules is consistent with the Act.

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 brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement of 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 Board 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 Board rule under Section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. At any time within 60 days of the filing the proposed rule change, the Commission may summarily abrogate such 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.

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.³⁷ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

³⁰ The Board believes that, to the extent that Rule G-32(b)(i) obligates a managing or sole underwriter to provide, upon request, multiple copies of the official statement to a dealer with respect to new issue municipal securities sold by such dealer to customers, such obligation must continue to be met with paper copies of the official statement unless the purchasing dealer has consented to electronic delivery of the official statement in lieu of delivery of multiple paper copies. See 1995 Release, *supra* note 5 at Section II.D. example 11.

³¹ See *supra* note 5 (regarding information to be submitted to the Board's designee with respect to CUSIP number assignment and to registered securities depositories).

³² See *supra* note 18 and accompanying text (regarding the written agreement to be entered into between a dealer and its consultant). See also *supra* note 5 (regarding the submission of Form G-37/G-38 to the Board).

³³ Although the person receiving such telemarketing call may in many cases not be customer, the Board believes that, solely for purposes of this provision of Rule G-39, such consent may be accepted by the dealer by electronic means so long as the standards established in this notice with respect to electronic communications from customers to dealers are met.

³⁴ See 1996 Release, *supra* note 4.

³⁵ See 1995 Release, *supra* note 5.

³⁶ Section 15B(b)(2)(C) states that the rules of the Board 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 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.

³⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-98-12 and should be submitted by January 26, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40846; File No. SR-NASD-98-97]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Extension of Effectiveness of Pilot Injunctive Relief Rule

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice of hereby given that on December 22, 1998, 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 and II below, which Items have been prepared by the NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the NASD to extend the pilot injunctive relief rule for six months. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

10335. Injunctions

* * *

(i) Effective Date

This Rule shall apply to arbitration claims filed on after January 3, 1996. Except as otherwise proved in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule This Rule shall expire on [January 3, 1999] *July 3, 1999*, unless extended by the Association's Board of Governors.

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 Regulation included statement 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 III below. The NASD Regulation 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) Purpose

The NASD's injunctive relief rule, Rule 10335 of the Code, provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in intra-industry disputes. NASD Rule 10335 took effect on January 3, 1996, for a one-year pilot period.³ The initial pilot period was subsequently extended twice by the Commission to permit the Regulation's Office of Dispute Resolution to gain additional experience with the rule before determining whether the rule should be made permanent, the pilot period should be extended, or the rule should be permitted to terminate by its terms.⁴ In

July 1998, the NASD filed a proposed rule change that would amend Rule 10335 and make it a permanent part of the Code.⁵ The NASD also sought, and the Commission approved, a six-month extension of the pilot rule to provide time for the Commission to take action with respect to the proposed rule change.⁶ The rule is currently due to expire on January 3, 1999.

The proposed amendments to Rule 10335 were published for comment, and the NASD filed an amendment to the proposed rule change in response to those comments in December 1998. The Commission has received additional comments regarding the proposed rule change since that amendment was filed. The purpose of the requested six-month extension of the pilot rule is to provide the NASD with time to consider and respond to the additional comments.

(b) Statutory Basis

The NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the current pilot rule serves the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes, and that it is in the interest of members that the effectiveness of the rule remains uninterrupted pending Commission action on the permanent rule filing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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.

1996), and 39458 (December 17, 1997), 62 FR 67423 (December 24, 1997).

⁵ Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998).

⁶ Securities Exchange Act Release No. 40124 (June 24, 1998), 63 FR 36282 (July 2, 1998).

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 36145 (August 23, 1995), 60 FR 45200 (August 30, 1995).

⁴ Securities Exchange Act Release Nos. 38069 (December 20, 1996), 61 FR 68806 (December 30,