

Fund to acquire securities of a Securities Affiliate within the limits of rule 12d3-1. The requested exemption would apply only where a Securities Affiliate is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion within the meaning of Rule 12d3-1(c) solely because an Affiliated Adviser is the Adviser to another portion of the same Multi-Advised Fund.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3-1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Advised Fund. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of a Fund's shareholders by preventing the Unaffiliated Subadviser from achieving optimal investment results.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Advised Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Securities Affiliate or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Multi-Advised Fund) will be an affiliated person or a second-tier affiliate of: (a) Equitable or any Equitable Affiliate; (b) any Unaffiliated Subadviser; (c) any principal underwriter or promoter of a Multi-Advised Fund; or (d) any officer, trustee or employee of a Multi-Advised Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate a principal underwriter of which is an Affiliated Underwriter, the conditions of

rule 10f-3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3-1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Adviser or an affiliated person of an Affiliated Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934, Release No. 45179/December 20, 2001]

### Securities Industry Association 1401 Eye Street, NW., Washington, DC 20005-2225; Order Extending Broker-Dealer Exemption From Sending Financial Information to Customers

The Securities and Exchange Commission ("Commission") is extending its temporary Order issued December 10, 1999<sup>1</sup> under Section 17(e) of the Securities Exchange Act of 1934 ("Exchange Act") exempting broker-dealers from Exchange Act Section 17(e)(1)(B) and Rule 17a-5(c). These sections require a broker-dealer to send each of its customers semi-annually its balance sheet with appropriate footnotes prepared in accordance with generally accepted accounting principles ("GAAP") and a footnote disclosing the firm's net capital and required net capital. To take advantage of the exemption, a broker-dealer must semi-annually send the net capital footnote to its customers, must send its balance sheet and appropriate footnotes to customers upon request via a toll-free number, and must place its balance sheet and appropriate footnotes on its Web site.

The Commission's temporary Order established a pilot program which expires on December 31, 2001. During the pilot program, a broker-dealer taking advantage of the exemption was required, among other things, to report to the Commission the number of times its balance sheet was viewed on its Web site and the number of requests for

paper copies received via its toll-free number. In a letter dated December 11, 2001, the Securities Industry Association ("SIA") stated that it supported an extension of the exemption.

The Commission has determined, on the basis of information set forth in the SIA's letter and information reported by broker-dealers taking advantage of the exemption, that extending the exemption for one year is consistent with the public interest and the protection of investors. The Commission intends to propose a rule amendment shortly which would make the relief permanent.

A broker-dealer exempted under this Order must comply with each of the following requirements:

(1) The broker-dealer semi-annually sends its customers, at the times it otherwise would have sent its customers its balance sheet in accordance with Rule 17a-5(c), a statement which includes: (a) The amount of the broker-dealer's net capital and its required net capital in accordance with Rule 15c3-1, (b) to the extent required under Rule 17a-5(c)(2)(ii), a description of the effect on the broker-dealer's net capital and required net capital of subsidiaries consolidated pursuant to Appendix C of Rule 15c3-1 (jointly the "Net Capital Disclosure"), and (c) any statements otherwise required by Rule 17a-5(c)(2)(iii)-(iv).<sup>2</sup>

(2) The above statement is given prominence in the materials sent to its customers and includes an appropriate caption stating that customers may obtain the broker-dealer's balance sheet (in the case of the annual balance sheet, audited and with the auditor's certification) at no cost, by accessing the broker-dealer's Web site or calling the broker-dealer's stated toll-free number. The statement must provide the specific Internet Universal Research Locator (URL) at which the broker-dealer's balance sheet is located.

(3) The broker-dealer publishes a balance sheet prepared in accordance with GAAP, including footnotes and the Net Capital Disclosure, accessible through each of the following Internet locations:

(a) The broker-dealer's Website homepage, containing a hyperlink providing a direct link to the broker-dealer's balance sheet;

(b) Each page at which a customer can log-on to the broker-dealer's Website, containing a hyperlink providing a

<sup>2</sup> A broker-dealer may comply with this requirement by: (a) delivering the statements to its customers in paper copy form or (b) transmitting the statements to its customers electronically.

<sup>1</sup> Exchange Act Release No. 42222.

direct link to the broker-dealer's balance sheet; and

(c) If the Websites for two or more broker-dealers can be accessed from the same home page, a hyperlink directing the Internet user to the home page of each broker-dealer. Upon reaching the broker-dealer's home page, the home page contains a hyperlink providing a direct link to the particular broker-dealer's balance sheet.

Each of the above hyperlinks is placed on the broker-dealer's Website, in either textual or button format, as a separate, prominent link, in a manner that is clearly visible.<sup>3</sup>

(4) The broker-dealer maintains a toll-free number that customers can call to request a paper or electronic copy of its balance sheet.

(5) If a customer requests a paper or electronic copy of the broker-dealer's balance sheet, the firm sends it promptly at no cost to the customer.

(6) If the broker-dealer's net capital falls below the early warning levels of Rule 17a-11 and the broker-dealer fails to cure the relevant deficiency within 24 hours, or if the broker-dealer's auditors determine that a material inadequacy exists with regard to any of the financial disclosures contained in the audited financial statements or in the broker-dealer's internal controls, the firm returns to sending its balance sheet as required under Rule 17a-5(c), including footnotes, by the next date that financial disclosures are required, until the deficiency or material inadequacy is cured.

(7) The broker-dealer submits to the Commission, addressed to Division of Market Regulation, United States Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-1001, no later than 60 days after each distribution of its published statement containing the Net Capital Disclosure:

(a) A report on the number of requests that the broker-dealer has received for copies of its balance sheet via its toll-free number and the number of times its balance sheet has been viewed on its Website. The report contains the number of requests received in the month following its Website publishing of its recent balance sheet and, except in the case of the first Website publishing, in the preceding six months; and

(b) Written investor complaints regarding the exemption received by the broker-dealer in the preceding six months.

Accordingly,

It is ordered, under Exchange Act Section 17(e)(1)(C) and Rule 17a-5(l)(3), that the exemption from Exchange Act Section 17(e)(1)(B) and Rule 17a-5(c) granted in Exchange Act Release No. 42222 is extended to December 31, 2002.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45174; File No. SR-MSRB-2001-07]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations

December 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 19b-4 thereunder,<sup>1</sup> notice is hereby given that on October 16, 2001, Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSRB-2001-07) (the "proposed rule change") 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 is filing a proposed rule change concerning minimum denominations consisting of an amendment to its rule G-15, on confirmation, clearance and settlement of transactions with customers, an amendment to its rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers, and an interpretation of its rule G-17, on conduct of municipal securities activities.

The text of the proposed rule change follows.<sup>2</sup>

G-15 Confirmation, Clearance, [and] Settlement [of] *and Other Uniform Practice Requirements with Respect to Transactions with Customers*

(a) through (e) No change.

(f) *Minimum Denominations*

(i) *Except as provided in this section*

*(f), a broker, dealer or municipal securities dealer shall not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue.*

*(ii) The prohibition in subsection (f)(i) of this rule shall not apply to the purchase of securities from a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the customer's position in the issue already is below the minimum denomination and that the entire position would be liquidated by the transaction. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely either upon customer account information in its possession or upon a written statement by the customer as to its position in an issue.*

*(iii) The prohibition in subsection (f)(i) of this rule shall not apply to the sale of securities to a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the securities position being sold is the result of a customer liquidating a position below the minimum denomination, as described in subsection (f)(ii) of this rule. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely upon customer account records in its possession or upon a written statement provided by the party from which the securities are purchased. A broker, dealer or municipal securities dealer effecting a sale to a customer under this subsection (iii) shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Such written statement may be included on the customer's confirmation or may be*

<sup>3</sup> This Order exempts certain firms from the delivery requirement under Rule 17a-5(c), in part, based on the protections afforded by the Commission's financial responsibility rules. The condition that a broker-dealer makes its balance sheet available on its Website is not an alternative method of delivering this information to customers under Rule 17a-5(c).

<sup>1</sup> 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4 thereunder.

<sup>2</sup> Italics indicates additions; brackets denote deletions.