

Dated in Rockville, Maryland this 8th day of November, 1996.

For the Nuclear Regulatory Commission.
William M. Hill, Jr.,

Acting Secretary of the Commission.

[FR Doc. 96-29234 Filed 11-13-96; 8:45 am]

BILLING CODE 7590-01-P

POSTAL SERVICE

Sunshine Act Meeting; Board of Governors; Notice of Vote To Close Meeting

At its meeting on November 4, 1996, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for December 2, 1996, in Washington, DC. The members will consider proposed filings with the Postal Rate Commission for limited changes in mail classification, postal rates, and fees.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has

certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(4) of title 39, United States Code; and section 7.3(c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268-4800.

Thomas J. Koerber,
Secretary.

[FR Doc. 96-29370 Filed 11-12-96; 3:32 pm]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Notice of Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 20, 1996, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Letter to Ms. Margaret C. Christophy, MetraHealth Insurance Company re Contract No. 92RRB006.

(2) Letter to Cong. James A. Leach replying to his letter of September 17, 1996, Enclosing a Letter from the National Assn. Of Retired and Veteran Railway Employees in Iowa.

(3) Inquiry to Chief Actuary from OIG re Investment Transactions.

(4) Fiscal Year 1997 Budget Allocation.

(5) First Floor Outleasing.

(6) Transfer of Activities Between the Office of Programs and the Office of Administration.

(7) Organizational Placement of the Bureau of Quality Assurance.

(8) Recommendations for the Establishment of Field Office Co-Location Pilots:

A. Ft. Lauderdale Outstationing.

B. Proposals for Co-Location of Ft. Wayne, IN and Westbury, NY Branch Offices.

(9) Recommendations Concerning the Function and Structure of the Field Service.

(10) Proposed Occupational Disability Standards (PRODS) Task Force Meeting.

(11) Regulations:

(A) Parts 211, 255 and 230

(B) Part 261

(12) Labor Member Truth in Budgeting Status Report.

Portion Closed to the Public

(A) Positions in Hearings and Appeals.

(B) 1997 Performance Appraisal Plans for Dirs. of Administration and Programs, the General Counsel and Bur./Ofc. Heads Reporting to them Respectively.

© *Pending Board Appeals*

1. Renee Hernandez.

2. Dillard W. Lewis.
3. Daniel E. Mengelos.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312-751-4920.

Dated: November 8, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96-29293 Filed 11-12-96; 10:11 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37928; File No. SR-MSRB-96-7]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business

November 6, 1996.

I. Introduction

On August 6, 1996,¹ the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to amend rule G-37, on political contributions and prohibitions on municipal securities business, and rule G-8, on books and records. Notice of the proposed rule change appeared in the Federal Register on September 19, 1996.⁴

The Commission received three comment letters addressing the proposed rule change.⁵ One commenter endorsed the proposed amendments to

¹ On September 9, 1996, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 amends proposed language to rule G-37(g)(vii). See letter from Ronald W. Smith, Legal Associate, MSRB, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated September 9, 1996.

² 15 U.S.C. 78s(b)(1) (1988).

³ 17 CFR 240.19b-4.

⁴ Securities Exchange Act Release No. 37675 (September 12, 1996), 61 FR 49368.

⁵ Letter from Douglas L. Kelly, Vice President and Corporate Secretary, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, SEC, dated October 11, 1996 ("A.G. Edwards Letter"); Letter from E. Stephen Walsh, Administrative and Compliance Partner, David J. Greene and Company, to Jonathan Katz, Secretary, SEC, dated October 9, 1996 ("Greene Letter"); Letter from Irwin D. Rowe, Executive Vice President, Loeb Partners Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 4, 1996 ("Loeb Letter").

both rules,⁶ while another endorsed only the amendments to rule G-37.⁷ Finally, the third commenter, while not objecting to the amendments, reserved judgment pending clarification of certain issues.⁸ This order approves the proposed rule change.

II. Description of the Amendments

The rule change: (i) amends the definition of "municipal finance professional"; (ii) amends the definition of "executive officer"; (iii) clarifies the definition of "official of an issuer"; (iv) clarifies the definition of "municipal securities business"; and (v) requires the retention of Forms G-37/G-38 and of records itemizing mailing of the same.

A. Definition of "Municipal Finance Professional"

Currently, subparagraph (E) of rule G-37(g)(iv) states that an associated person who is a member of the dealer executive or management committee or similarly situated official is a municipal finance professional. This provision is the only part of the definition of municipal finance professional that does not depend upon the municipal securities activities of the person or the supervision of persons engaged in municipal securities activities. This provision was intended to prevent issuer officials from seeking contributions from dealers' senior executives once rule G-37 precluded municipal finance professionals from contributing to those officials. The Statement of Initiative by Dealers regarding Political Contributions also included executive or management committee members within its voluntary prohibition on political contributions.⁹

The MSRB stated in its filing that there are certain dealers that occasionally engage in municipal securities sales transactions, but do not engage in municipal securities business as defined in rule G-37(g)(vii). As a result, the only individuals of those dealers who meet the definition of municipal finance professional are executive management committee members. Because such dealers do not engage in municipal securities business, the ban on business based on political contributions does not affect them. However, such dealers also are required

to record and report the contributions and payments of these municipal finance professionals. This amendment recognizes that there is no useful purpose served in requiring dealers to record and report the political contributions of executive or management committee members if their firm does not engage in municipal securities business. The rule change approved today amends the definition of municipal finance professional in rule G-37(g)(iv)(E) to exempt executive or management committee members from the definition of municipal finance professional (and thus the applicable recording and reporting requirements) if these are the only individuals within a firm who would meet the definition as described in subparagraphs (A) through (E).¹⁰

B. Definition of "Executive Officer"

Currently, rule G-37 requires a dealer to record and report the contributions of executive officers even if that dealer has no one meeting the definition of municipal financial professional. Even though contributions and payments by executive officers are subject to the recordkeeping and reporting provisions of rule G-37, these contributions do not result in a ban on business. However, paragraph (d) of rule G-37 prohibits dealers from using executive officers (as well as any other person or entity) as conduits for making contributions to officials of issuers. The recordkeeping and reporting requirements apply to contributions by executive officers to ensure that these individuals are not being used to circumvent the rule.

Rule G-37 was intended to prevent the practice of pay-to-play. However, contributions by executive officers of a dealer to issuer officials cannot skew the process of selecting a dealer to conduct municipal securities business in favor of that particular dealer if that dealer does not engage in municipal securities business. Thus, the rule change approved today amends the definition of executive officer in rule G-37(g)(v) to provide that, if no associated person of the dealer meets the definition of municipal finance professional, the dealer shall be deemed to have no executive officers (and thus the recording and reporting requirements

for executive officers are not applicable).¹¹

In both situations involving executive officers, as well as municipal finance professionals described in Section (A) above, if the dealer later engages in municipal securities business, then the dealer will have to record the contributions and payments made by any executive officers, as well as municipal finance professionals, for the previous two calendar years to determine whether it is banned from any municipal securities business.¹²

C. Definition of "Official of an Issuer"

When rule G-37 was approved, the term "official of such issuer" or "official of an issuer" was defined as any incumbent, candidate or successful candidate for elective office of the issuer, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business. The definition was intended to include any state or local official or candidate (or successful candidate) who has influence over the awarding of municipal securities business, including certain state-wide executive or legislative officials.

After rule G-37 was approved, concerns were raised that the definition did not properly encompass all elected officials with the authority to influence the awarding of municipal securities business by the issuer, because it focused on "an elective office of the issuer." For example, a state may have certain issuing authorities whose boards of directors are appointed by the governor. Although the governor is an official with influence over the awarding of municipal securities business, the governor, in this illustration, is not incumbent or candidate for "elective office of the issuer" (i.e., the state authority). Thus, a contribution to the governor would not prohibit a dealer from engaging in business with the state authority. The rule was intended to include the governor as an official of the issuer in such circumstances. Therefore, the rule change amends that definition to clarify the intent of the rule.¹³

¹¹ The rule change permits dealers to remove individuals subject to the new rule language from their lists of executive officers and to cease recording and reporting their contributions.

¹² Any dealer who has municipal finance professionals, even if the dealer currently is not engaging in municipal securities business, must record and report the contributions and payments of executive officers and municipal finance professionals.

¹³ Securities Exchange Act Release No. 34160 (June 3, 1994), 59 FR 30376 (June 13, 1994).

⁶ Loeb Letter, p. 2.

⁷ Greene Letter.

⁸ A.G. Edwards Letter, p. 1.

⁹ In October 1993, at the urging of SEC Chairman Levitt, a number of dealers agreed to a Statement of Initiative to support the principle that political contributions which are intended to influence the awarding of municipal securities business should be prohibited.

¹⁰ Rule G-37(g)(iv) states that each person designated by the dealer as a municipal finance professional is deemed to be a municipal finance professional and that each person so designated will retain this designation for two years after the last activity or position which gave rise to the designation. The rule change approved today, permits dealers to remove individuals subject to the new rule language from their lists of designated municipal finance professionals and to cease recording and reporting their contributions.

Accordingly, the rule change amends rule G-37(g)(vi) to clarify that the definition includes "any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer." This revised definition addresses situation in which an elected official may *appoint* someone to an issuer position.

D. Definition of "Municipal Securities Business"

Under rule G-37, dealers could be subject to a ban on business with an issuer if certain contributors are made to officials of that issuer. The ban on business provision applies to business awarded on a negotiated basis; the rule does not prohibit dealers from engaging in business awarded on a competitive basis.

Some dealers have noted that it is not clear in subparagraph (C) of rule G-37(g)(vii) whether, for financial advisory services, the rule is referring to the selection of a financial advisor on other than a competitive bid basis or whether the rule is referring to financial advisory services provided only on negotiated deals. The proposed rule change amends rule G-37(g)(vii)(C) to clarify that the definition of "municipal securities business" includes the provision of financial advisory services when the dealer is chosen to provide such services on a negotiated basis.¹⁴ It is irrelevant whether the financial advisory services provided by the dealer are with respect to a negotiated or competitive issue. A similar change has been made to rule G-37(g)(vii)(D) to clarify that the definition of "municipal securities business" includes remarketing agent services when the dealer is chosen as remarketing agent on a negotiated basis.

E. Recordkeeping: Amending Rule G-8(a) (xvi)

Rule G-8(a) (xvi), on books and records, requires municipal securities brokers and municipal securities dealers to make and keep records of all of the information on Forms G-37/G-38. While this rule also requires dealers to keep records of additional information (e.g., a listing of the names, titles, city/county and state of residence of all municipal finance professionals), it does not state that the dealers must also physically maintain copies of these

forms and the mailing receipts in their offices.

Requiring dealers to keep copies of the Forms G-37/G-38 submitted to the Board would be helpful to the agencies charged with enforcing rule G-37 because physically maintaining these forms on the premises will make them easily accessible and retrievable for review. Moreover, it would be helpful to those agencies to require dealers to keep the certified or registered mail record or other records indicating dispatch to ensure their timely submission.¹⁵ Hence, the rule has been revised to add section H which will provide notice that maintaining copies of Forms G-37/G-38 submitted to the Board, along with the certified or registered mail receipts is required.

III. Summary of Comments

The Commission received three comment letters in response to the proposed rule change.¹⁶ The Greene Letter generally endorsed the proposed change to rule G-37.¹⁷ The remaining letters, however, raised several issues that the Commission believes should be addressed. The Board, at the Commission's behest, has proffered a response.¹⁸

The first issue raised in the Loeb Letter concerns the definition of "municipal finance professional" in rule G-37(g) (iv). Loeb believes that the Board should not include within the definition of municipal finance professional, any person primarily engaged in the sale of unsolicited agency transactions for customers.¹⁹ The Board's rules apply to all transactions in municipal securities by dealers whether dealers act as agent or principal.²⁰ Accordingly, the Board does not believe that it would be appropriate to exempt specific categories of municipal securities transactions (i.e., unsolicited agency transactions) from the activities that could make someone "primarily engaged in municipal securities representative activities."²¹ The Commission believes that exempting specific categories of municipal securities transactions would increase

potential for abuse and facilitate inconsistent interpretations and therefore, would be inappropriate.

The second issue raised in the Loeb Letter concerns the interpretation of the term "primarily engaged" as it is used in the definition of municipal securities professional.²² Loeb believes a definitive explanation is necessary to determine whether certain broker-dealers are subject to the reporting requirements of rules G-37 and G-8.²³ The Board has not defined the term "primarily engaged in" because it believes it is appropriate for a dealer to determine which of its personnel who engage in municipal securities representative activities could reasonably fall within the definition of municipal finance professional.²⁴ The Commission supports the Board's interpretation of the term "primarily engaged." To facilitate ease of compliance, the definition encompasses any individual and circumstance that could reasonably qualify as the activity of a municipal finance professional. Thus, a narrower interpretation is ill-advised.

The first issue raised by the A.G. Edwards Letter requests clarification of what is meant by selection of a financial advisor on "other than a competitive basis."²⁵ A.G. Edwards contends that "other than a competitive basis" encompasses more than the lowest bid for the job; other criteria, including price, are evaluated before final selection is made.²⁶ The Board states that the selection of a financial advisor on a competitive bid basis refers to selection solely on the basis of price.²⁷ Therefore, the selection of a financial advisor made on other than the sole basis of price would represent a selection of "other than a competitive bid basis."²⁸ The Commission agrees that selection of a financial advisor on a competitive bid basis means selection solely on the basis of price. The scope of this exemption is intentionally limited because, in most cases, selection is made on a negotiated basis.

The second issue raised by the A.G. Edwards Letter entails clarifying when an agreement is reached to provide financial advisory services and thus, when that agreement must be reported.²⁹ A.G. Edwards notes that in many cases, financial advisory

¹⁵ Rule G-9, on preservation of records, requires dealers to retain the G-8(a) (xvi) records concerning political contributions and prohibitions on municipal securities pursuant to rule G-37 for a six year period.

¹⁶ See *supra* note 5.

¹⁷ Green Letter.

¹⁸ Letter from Ronald W. Smith, Legal Associate, MSRB, to Mignon McLemore, Law Clerk, Division of Market Regulation, SEC, dated October 22, 1996 ("October 22 Letter").

¹⁹ Loeb Letter, pg. 2.

²⁰ October 22 Letter, p. 1.

²¹ *Id.*

²² Loeb Letter, p. 2.

²³ *Id.*

²⁴ October 22 Letter, p. 1.

²⁵ A.G. Edwards Letter, p. 1.

²⁶ *Id.*

²⁷ October 22 Letter, p. 2.

²⁸ *Id.*

²⁹ A.G. Edwards Letter, p. 2.

¹⁴ See Amendment No. 1.

agreements contain an option exercisable by the issuer to extend the agreement for an additional year at either the same fee or at some other fee established at the time the initial engagement was entered.³⁰ A.G. Edwards believes that exercising the option of the existing engagement does not constitute a "new" financial advisory agreement and therefore, should not be subject to rule G-37/G-38 reporting requirements.³¹ The Board does not believe that the exercise of an option by an issuer to extend a financial advisory agreement, with such an option contained in the agreement, constitutes a "new" agreement; therefore, there is not reporting requirement for the exercise of this option.³² The Commission agrees that an exercised option that was contained in the initial agreement to engage a financial advisor would not constitute a "new" agreement, because the issuer is required to file a report on whenever the deal is completed, option period notwithstanding.

IV. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C) ³³ of the Act. By amending rule G-37, the rule change removes impediments to the mechanism of a free and open market in municipal securities because (i) it no longer applies to persons and contributions that do not implicate the concern that rule G-37 was intended to address; (ii) it clarifies that the rule is intended to apply to contributions to any elected officials if that official's office gives the official the ability to influence the awarding of municipal securities business to an issuer; and (iii) clarifies the scope of activity subject to the rule. The amendment to rule G-8 protects investors and is in the public interest in that it facilitates enforcement of rule G-37.

³⁰ *Id.*

³¹ *Id.*

³² October 22 Letter, p. 2.

³³ Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are 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.

In revising the definitions of "municipal finance professional" and "executive officer," the MSRB has provided definitive criteria for dealers to use in determining whether they are subject to the rule's reporting requirements. In so doing, the MSRB has eliminated some of the uncertainty associated with rule G-37 compliance issues. Exempting those persons and contributions that are no longer affected by the rule should enhance efficiency in reporting and recording, because dealers no longer have to make assumptions in determining to whom the rule applies.

In amending the definition of "official of an issuer," the Board has addressed situations in which an elected official may appoint someone to an issuer position. This amendment acknowledges the fact that political influence and alliances can affect the selection process. In clarifying its intent that a person who can directly or indirectly influence hiring decisions be included in the definition, the Board has attempted to ensure fairness in the selection process by removing politics from the equation.

In revising the definition of "municipal securities business," the Board is clarifying which dealers would be subject to the ban and in what situations. According to some dealers, rule G-37(g)(vii) was unclear as to whether "on other than a competitive bid basis" applied to the selection of a financial advisor or to the services provided by the financial advisor. The Board has determined that the definition includes financial advisory services when the dealer is chosen as financial advisor on a negotiated basis and therefore, the ban on business provision under rule G-37 would apply.

In adding the requirement to rule G-8 that dealers maintain copies of Forms G-37/G-38 along with receipts of mailing the same, the Board has improved disclosure in the markets by making these records readily accessible for review. Also, the benefits of this requirement outweigh any burdens that additional recordkeeping may impose, because tangible evidence will now be available to resolve disputes and to monitor compliance.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁴ that the

proposed rule change (SR-MSRB-96-07) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-29150 Filed 11-13-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37920; File No. SR-PSE-96-41]

November 4, 1996.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Closing Time for Trading of Equity Options

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 October 25, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") 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 Pacific Stock Exchange Incorporated ("PSE" or "Exchange") is proposing to amend its rules to change its closing time for options trading from 1:10 p.m. Pacific Time¹ to 1:02 p.m. for equity options. The Exchange is also proposing to change certain related rules on closing rotations and the submission of exercise notices for index options.

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 III below. The self-regulatory organization has prepared summaries, set forth in

³⁵ 17 CFR 200.30-3(a)(12).

¹ All times referred to in this filing are Pacific Time.

³⁴ 15 U.S.C. 78s(b)(2) (1988).