

containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Portfolio.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the 1940 Act.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39084; File No. SR-MSRB-97-5]

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

September 16, 1997.

On September 9, 1997, 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-97-5), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder. 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 proposal 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) of the Act, which renders the proposal 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 notice of interpretation concerning rule G-37

on political contributions and prohibitions on municipal securities business (hereafter referred to as "the proposed rule change"). The proposed rule change is as follows:

Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business

Transition and Inaugural Expenses

1. Q: May a municipal finance professional who is entitled to vote for an issuer official make contributions to pay for such official's transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer?

A: Yes, under certain conditions. The de minimis exception allows a municipal finance professional to contribute up to \$250 per candidate per election if the municipal finance professional is entitled to vote that issuer official. The de minimis exception is keyed to an election cycle; therefore, if a municipal finance professional contributed \$250 to the general election of an issuer official, the municipal finance professional would not be able to make any contributions to pay for transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to an issuer official prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to \$250 to pay for transition or inaugural expenses and payment of debt incurred in connection with the election without causing a prohibition on municipal securities business.

Definition of Issuer Official

2. Q: An incumbent was seeking re-election as an issuer official but she lost the election. She is now soliciting money to pay for the debt incurred in connection with this election. Would there be a prohibition on engaging in municipal securities business with the issuer if a dealer or a municipal finance professional provides money for the payment of this debt?

A: No, under certain conditions. If the incumbent is out of office at the time she is soliciting money to pay for the election debt, then she is no longer considered to be within the definition of "official of an issuer" and any monies given for the payment of debt incurred in connection with the election in this instance is not subject to rule G-37. If the incumbent still holds her issuer official position at the time she is soliciting money to pay for the election

debt, then, if a municipal finance professional contributed \$250 to her during the general election, the municipal finance professional would not be able to make any contributions for the payment of debt without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to the incumbent prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to \$250 for the payment of debt incurred in connection with the election while the incumbent is still in office without causing a prohibition on municipal securities business. A dealer may not contribute any monies towards the payment of debt while the incumbent is still in office without causing a prohibition on municipal securities business with the issuer.

Definitions of Municipal Finance Professional and Executive Officer

3. Q: In making the determination of which associated persons of a dealer meet the definitions of municipal finance professional and executive officer, is it correct to designate all the executives of the dealer (e.g., President, Executive Vice Presidents) under the category of executive officers?

A: No. In making the determination of whether someone is a municipal finance professional or executive officer, one must review the activities of the individual and not his or her title.

Rule G-37(g)(iv) defines the term "municipal finance professional" as:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G-3(a)(i);

(B) any associated person who solicits municipal securities business, as defined paragraph (vii);

(C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G-1(a); or

(E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1) executive or management committee or

similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Rule G-37(g)(v) defines the term "executive officer" as:

An associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1), but does not include any municipal finance professional, as defined in paragraph (iv) of this section (g); provided, however, that, if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no executive officers. [emphasis added].

Dealers should first review the activities of their associated persons to determine whether they are municipal finance professionals, and then once that list of individuals has been established, conduct a review of the remaining associated persons to determine whether they are executive officers. Dealers should pay close attention to those associated persons who are soliciting municipal securities business and, thus, will be considered municipal finance professionals. The Board has previously stated that solicitation activities may include, but are not limited to, responding to issuer Requests for Proposals, making presentations of public finance and/or municipal marketing capabilities to issuer officials, and engaging in other activities calculated to appeal to issuer officials for municipal securities business, or which effectively do so. (See "Additional Rule G-37 Questions & Answers," MSRB Reports, Vol. 14, No. 5 (December 1994) at 8).

Reporting by Syndicate Members

4. Q: Rule G-37(e) requires, among other things, that dealers submit information to the Board on Form G-37/G-38 about the municipal securities business in which they engaged. Is information about the municipal securities business engaged in required to be submitted by all syndicate and selling group members, or is it only the responsibility of the manager(s) to submit such information on behalf of the syndicate?

A: All manager(s) and syndicate members (excluding selling group members) must separately report the

municipal securities business in which they engaged.

* * * * *

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 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

On April 7, 1994, the Commission approved Board rule G-37, concerning political contributions and prohibitions on municipal securities business.¹ Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published seven prior notices of interpretation which set forth, in question-and-answer format, general guidance on rule G-37.² In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G-37, and, from time to time, will publish additional notices of interpretations, as necessary.³ In light of

¹ Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

² See Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994); Securities Act Release No. 34603 (Aug. 25, 1994), 59 FR 45049 (Aug. 31, 1994); Securities Exchange Act Release No. 35128 (Dec. 20, 1994), 59 FR 66989 (Dec. 28, 1994); Securities Exchange Act Release No. 35544 (March 28, 1995), 60 FR 16896 (April 3, 1995); Securities Exchange Act Release No. 35879 (June 21, 1995), 60 FR 33447 (June 28, 1995); Securities Exchange Act Release No. 36857 (Feb. 16, 1996), 61 FR 7034 (Feb. 23, 1996); Securities Exchange Act Release No. 37675 (Sept. 12, 1996), 61 FR 49368 (Sept. 18, 1996).

See MSRB Reports, Vol. 14, No. 3 (June 1994) at 11-16; Vol. 14, No. 4 (August 1994) at 27-31; Vol. 14, No. 5 (December 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; Vol. 15, No. 2 (July 1995) at 3-4; Vol. 16, No. 1 (January 1996) at 31; and Vol. 16, No. 3 (September 1996) at 35-36. See also CCH Manual paragraph 3681.

³ See Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 13, 1994) (SR-

questions recently received from market participants concerning the applicability of the rule to transition and inaugural expenses, the definition of issuer official, the definitions of municipal finance professional and executive officer, and reporting by syndicate members, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing this eighth set of questions and answers.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.⁴

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 on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

The Board has designated this proposal 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) of the Act, which renders the proposal effective upon receipt of this filing by the Commission.

At any time within sixty days of the filing of this 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 purpose of the Act.

MSRB-94-06) and Securities Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994) (SR-MSRB-94-15).

⁴ Section 15B(b)(2)(C) states in pertinent part 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."

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 submissions, 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-97-5 and should be submitted by October 14, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39082; File No. SR-NASD-97-51]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding the Transfer of Securities of Issuers Listed on the Nasdaq Stock Market That Are Held Pursuant to a Direct Registration Program

September 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 16, 1997, The Nasdaq Stock Market, Inc. ("Nasdaq") 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 primarily by Nasdaq. The Commission is publishing this notice to

solicit comments from interested persons on the proposed rule change.

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

Nasdaq is proposing to amend Rules 4200, 4310, 4320, and 4460 of the National Association of Securities Dealers, Inc. ("NASD") to require Nasdaq issuers that elect to offer a direct registration program to shareholders to participate in an electronic link, either directly or through the issuer's transfer agent, with a securities depository registered under Section 17A of the Act.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

The purpose of the proposed rule change is to facilitate the clearance and settlement of securities held in book-entry form in the context of recent developments concerning the direct registration concept. Over the past twelve years, regulators, representatives of private industry, and the transfer agent community have worked together to explore alternatives to maintaining ownership interest in securities without certificates. In 1990, the Commission held a Roundtable on Clearance and Settlement to discuss recommendations of the Group of Thirty U.S. Working Committee which, among other things, discussed ways in which investors could obtain benefits of a direct registration system ("DRS"). The Commission has been promoting the DRS concept, and in 1994 requested that the industry work to develop DRS in order to provide investors with additional options to holding their securities in certificate form.³ A basic structure for DRS has been developed and agreed to by a joint committee of

representatives of the Securities Industry Association, the Securities Transfer Association, the Corporate Transfer Agents Association, and registered securities depositories.

The concept of DRS is modeled after systems used in dividend reinvestment and stock purchase programs, which are currently offered by many issuers or transfer agents. It is being considered by issuers in connection with the move to a faster settlement cycle and reflects investor trends away from physical certificates. DRS promotes investor choice, while encouraging efficient clearance and settlement procedures. Specifically, DRS offers shareholders the ability to: (1) receive an account statement instead of a negotiable certificate; (2) get a certificate upon demand; and (3) direct the book-entry transfer of the underlying position to a broker-dealer upon request.

A key component of DRS has been the initiation of an electronic communication system linking issuers or their transfer agents with registered securities depositories. Assuming an issuer and its transfer agent elect to offer direct registration services, this link would permit a broker-dealer to deliver to a transfer agent a customer's request that the securities be registered on the books of the issuer in book-entry form. Such a system also will allow the transfer agent to send an electronic acknowledgment to the broker-dealer that the securities have been registered in the customer's name on the books of the issuer in book-entry form. Thus, DRS helps promote efficiencies in the prompt and accurate clearance and settlement of securities transactions by providing individual investors that do not want to have broker-dealers hold their securities for them in street name the option of holding in book-entry form on the books of the issuers and most importantly, the ability to subsequently have such positions transferred electronically to banks or broker-dealers in connection with the sales or disposition of the securities.

Recently, The Depository Trust Co. ("DTC") received Commission approval to establish the procedures and the necessary electronic link to implement DRS. Under this system, an investor will have the right at any time to transfer its DRS position from the issuer to a broker-dealer through the facilities of DTC in order to sell or pledge the security. Alternatively, an investor will have the right at any time to request a certificate. Under DTC's rule change, to participate in DRS, a transfer agent

² 15 U.S.C. 78q-1.

³ Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (Concept Release discussing direct registration).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).