Dated: May 14, 1998.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39983; File No. SR–MSRB–97–9]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Municipal Securities Rulemaking Board Relating to Rule G–38 on Consultants

May 12, 1998.

On March 18, 1998,[1] 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–97–9), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change and Amendment No. 1 are hereafter referred to collectively as the ''proposed rule change.'' The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 amendment to Rule G–38 on consultants. The proposed rule change would give brokers, dealers and municipal securities dealers (collectively referred to as ''dealers'') the option of disclosing their consulting arrangements to issuers, pursuant to section (c) of the rule, on either an issue-specific or issuer-specific basis. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

Rule G–38. Consultants

(a)–(b) No change.

(c) Disclosure to Issuers. Each broker, dealer or municipal securities dealer shall submit in writing to each issuer with which the broker, dealer or municipal securities dealer is engaging or seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer, which information shall include the name, company, role and compensation arrangement of any consultant used, directly or indirectly, by the broker, dealer or municipal securities dealer to attempt to obtain or retain municipal securities business with each such issuer. Such information shall be submitted to the issuer *either:*

(*i*) prior to the selection of any broker, dealer or municipal securities dealer in connection with [such] *the particular* municipal securities business *being sought*[.]*; or*

(ii) at or prior to the consultant's first direct or indirect communication with the issuer for any municipal securities business being sought. Each broker, dealer or municipal securities dealer shall promptly advise the issuer, in writing, of any change in the information disclosed, pursuant to this subsection (ii), on each consulting arrangement relating to such issuer. In addition, each broker, dealer or municipal securities dealer disclosing information pursuant to this subsection (ii) shall update such information by notifying each issuer in writing within one year of the previous disclosure made to such issuer concerning each consultant's name, company, role and compensation arrangement, even where the information has not changed; provided, however, that this annual update requirement shall not apply where the broker, dealer or municipal securities dealer has ceased to use the consultant, directly or indirectly, to attempt to obtain or retain municipal securities business with the particular issuer.

(d) No change.

* * * * *

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

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

Rule G–38, on consultants, requires dealers: (1) To have written agreements with certain individuals who are used by a dealer, directly or indirectly, to obtain or retain municipal securities business (''consultants''), and (2) to disclose such consulting arrangements directly to issuers and to the public through disclosure to the Board. Section (c) of the rule currently requires that each dealer disclose, in writing, to each issuer with which the dealer is engaging or is seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer. The information to be disclosed includes the name, company, role and compensation arrangement of any consultant used, directly or indirectly, to obtain or retain municipal securities business with each such issuer. Dealers are required to make such disclosures prior to the issuer's selection of any dealer in connection with the particular municipal securities business sought.

It has come to the Board's attention that this issue-specific nature of the disclosure requirement can create compliance problems for dealers in the case of frequent issuers of municipal securities as well as in the co-manager selection process. For example, an issuer may bring new issues to market several times a month, and if a dealer is using a consultant to obtain a syndicate slot in each such issue, the dealer is required to disclose the same information to the same issuer month after month and possibly week after week. In addition, the Board has learned that dealers who use a consultant to help obtain co-manager business sometimes have difficulty complying with Rule G–38(c) because, unlike the lead manager, a co-manager may learn of its selection for that business after the selection of the lead manager, thereby making it impossible for the dealer to disclose its consulting arrangements prior to the issuer's selection of any dealer, as required by the rule.

While the Board believes that the timing of the issue-specific disclosure requirement in Rule G–38(c) is appropriate in the vast majority of cases, the Board recognizes that it can be a problem in the context of frequent issuers of municipal securities and in the co-manager selection process. Thus, the Board has determined to amend Rule G–38(c) to give dealers the option of disclosing their consulting arrangements to issuers on either an issue-specific or issuer-specific basis.

[1] The Board initially submitted this proposal on November 24, 1997. However, a substantive amendment was requested to modify and clarify ambiguous timing issues in the proposed rule language. The Board filed Amendment No. 1 on March 18, 1998.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

Pursuant to the amendment, if a dealer chooses to disclose information regarding a consulting arrangement on an issuer-specific basis, the dealer must submit the information, in writing, to the issuer at or prior to the consultant's first direct or indirect communication with that issuer for any municipal securities business.[4] To ensure that such information, once disclosed, remains current, the amendment also requires dealers to (1) promptly notify the issuer, in writing, of any change in the information disclosed; and (2) update issuers, in writing, within one year of the previous disclosure of each consultant's name, company, role and compensation arrangement, even where such information has not changed.[5] Of course, this annual updating requirement would cease to apply if the dealer is no longer using the consultant, directly or indirectly, to attempt to obtain or retain municipal securities business with a particular issuer(s).

The Board submitted Amendment No. 1 in response to concerns expressed by Commission staff to provide that dealers disclosing information on an issuer-specific basis shall do so ''at or prior to the consultant's first direct or indirect communication with the issuer for any municipal securities business being sought.'' [6] Amendment No. 1 also clarifies that the annual updating requirement for dealers disclosing information on an issuer-specific basis is keyed off the previous full disclosure of the consultant's name, company, role and compensation arrangement (and not any interim disclosure of changes to such information).

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[7] The Board believes that the proposed rule change will facilitate compliance with Rule G–38, thereby protecting investors and the public interest.

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

The Board does not believe that the proposed rule change would 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

In June 1997, the Board published a draft amendment to Rule G–38(c) for industry comment.[8] In response, the Board received comment letters from three dealers.[9] One of these commenters expressed its belief that the amendment ''is helpful and may simplify the reporting process.'' [10] The other two commenters also supported the draft amendment.[11] One commenter stated that ''the proposed changes will greatly simplify the disclosure process when multiple transactions develop as the result of a consultant's activities with an issuer.''[12] However, this commenter recommended that the draft amendment require dealers to advise the issuer of any material change in the information disclosed; the commenter believes that this will obviate the need for dealers to file amended disclosure reports relating to, for example, an insignificant change to a consultant's role or to a minor change in the name of the consultant's organization. The Board believes that adopting the commenter's recommendation would introduce a subjective element to the disclosure requirement and would result in differing interpretations as to what is ''material.'' For example, by incorporating this subjective standard, the Board could not ensure that issuers would be advised of changes in the consultant's name, company, role and compensation arrangement—information which is required to be disclosed to issuers pursuant to Rule G–38(c). Thus, the Board has declined to adopt the commenter's recommendation.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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–97–9 and should be submitted by June 8, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

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[4] In contrast, the Board believes that disclosures made by a dealer on an issue-specific basis should continue to be required prior to the issuer's selection of any dealer for the particular municipal securities business being sought.

[5] Pursuant to Rule G–8(a)(xviii) on recordkeeping, dealers are required to maintain records of all disclosures made pursuant to Rule G–38(c). This would apply to disclosures made pursuant to the amendment.

[6] The amendment originally would have required that such disclosures be made ''within three business days of the consultant's first direct or indirect communication with the issuer, but in any event prior to the issuer's selection of such broker, dealer or municipal securities dealer for any municipal securities business being sought.'' *See supra* note 1.

[7] Section 15B(b)(2)(C) states that the Board's rules 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.

[8] MSRB Reports, Vol. 17, No. 2 (June 1997) at 17–18. The draft amendment would have required dealers that disclose information on their consulting arrangements on an issuer-specific bases to make such disclosures ''within three business days of the consultant's first direct or indirect communication with the issuer, but in any event prior to the issuer's selection of such broker, dealer or municipal securities dealer for any municipal securities business being sought.'' As discussed above, the Board submitted Amendment No. 1 in response to concerns expressed by Commission staff regarding the timing of this provision. Thus, the proposed rule change provides that dealers disclosing information on issuer-specific basis shall do so ''at or prior to the consultant's first direct or indirect communication with the issuer for any municipal securities business being sought.''

[9] A.G. Edwards, Rauscher Pierce Refsnes, Inc., and Smith Barney.

[10] Rauscher Pierce Refsnes, Inc.

[11] A.G. Edwards and Smith Barney.

[12] A.G. Edwards.

[13] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13096 Filed 5–15–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 39980; File No. SR–NYSE–98–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Include Rules 392, 460.30, 80A(b), 79A.15 and 105 in Its Minor Disciplinary Fine System under Exchange Rule 476A

May 8, 1998.

Pursuaant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 20, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On March 11, 1998, the Exchange filed Amendment No. 1,[2] and on April 16, 1998, the Exchange filed Amendment No. 2.[3] 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 proposed rule change would revise the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' by adding the failure to comply with the provisions of Rules 392,460.30, 80A(b), 79A.15 and 105. The Exchange believes it is appropriate to make the failure to comply with the provisions of the above-named rules subject to the possible imposition of a fine under Rule 476A procedures.[4]

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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, or any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under Rule 476 would be more costly and time-consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than a cautionary letter would convey. Rule 476A preserves due process rights; identifies those rule violations which may be the subject of summary fines; and includes a schedule of fines.

In SR–NYSE–84–27, which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated in would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained.

The Exchange is presently seeking approval to add to the List of Rules subject to possible imposition of fines under Rules 476A procedures, failure by members or member organizations to comply with the provisions of: (1) Rule 392 and Rule 460.30 which require notification to the Exchange by member organizations when they are participating in or engaging in certain activities related to an offering of securities listed on the Exchange; (2) Rule 80-A(b) which prohibits entry of stop orders for the remainder of any trading day on which ''sidecar'' procedures have been invoked; (3) Rule 79A.15 on specialists' publishing bids or offers upon receipt of limit orders; and (4) Rule 105 and its Guidelines with respect to specialists' specialty stock options transactions and the reporting of such transactions.

The purpose of the proposed change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited rules. The Exchange believes failure to comply with the requirments of these rules should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List so as to have a board range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (*e.g.*, the issuance of a fine rather than a cautionary letter) to a minor violation of a rule.

The Exchange wishes to emphasize the importance it places upon compliance with the above-named rules and, in particular, Rule 79A.15, which it adopted to reflect the provisions and certain interpretations of SEC Rule 11Ac1–4 under the Act. The Exchange recognizes that violations of Rule 79A.15 would likely result in violations of a Commission rule and, therefore, proposes, when a full disciplinary action is not warranted, to issue a summary fine instead of a cautionary letter as its first regulatory action against a specialist organization. While the Exchange, upon investigation, may determine that a violation of any of these rules is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the above-described rules, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under Rule 476.

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrects errors in exhibits to the Exchange's filing. See Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated March 10, 1998.

[3] Amendment No. 2 clarifies that the Exchange, in those instances in which an Exchange disciplinary action is not warranted, will issue a summary fine instead of a cautionary letter as its first regulatory action against a specialist organization. Such fine will be issued against the specialist member organization, which, according to the schedule of fines contained in Rule 476A, would be result in a fine of $1,000; the second and third regulatory actions within a rolling 12-month period would result in fines of $2,500 and $5,000 respectively. If a specialist member organization is issued a fine relating to Rule 79A.15 twice within a rolling 12-month period, the Exchange will pursue formal disciplinary proceedings under Rule 476 when continued poor performance during that rolling 12-month period warrants such action. See letter from Robert J. McSweeny, Senior Vice President, Market Surveillance, NYSE, to Katherine A. England, Division of Market Regulation, SEC, dated April 16, 1998.

[4] Concurrently with the proposed rule change, the Exchange is seeking to amend its Rule 19d–1 reporting plan for Rule 476A violations to include the items proposed for addition to the list of rules subject to Rule 467A. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated January 16, 1998.