

outstanding options contracts an investor holds will be doubled. The temporary doubling of the position and exercise limits, therefore, will ensure that investors will not potentially be in violation of the lower existing position and exercise limits while permitting market participants to maintain, after the split of the Indices, their current level of investment in the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Index option contracts. As noted above, the increased position and exercise limits of 24,000 and 30,000 contracts will revert to their original limits of 12,000 and 15,000 contracts at the expiration of the furthest expiration month for non-LEAPs as established on the date of the split.<sup>13</sup>

The Commission further believes that doubling the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices' divisors will not have an adverse market impact on the trading in these options. After the split, the Indices will continue to be composed of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisors. The Commission notes that the Amex's surveillance procedures will also remain the same.

Finally, the Commission notes that, before implementing the proposed changes, the Exchange will provide reasonable advance notice of the proposed changes to the Indices to its membership.<sup>14</sup> From experience, the Commission finds that reasonable notice may include the Exchange providing notice to its membership at least two weeks prior to the implementation of the proposed changes to the values of the Indices and the resulting adjustments to the outstanding options, issuing a second notice to its members just prior to implementing the Index reductions setting forth the new divisor and other relevant information, and issuing a circular to its members at least one month prior to the expiration of the furthest non-LEAP options on the Indices reminding its member firms that the respective position and exercise limits will revert to their original levels. Although not exclusive, the Commission believes that these proposed time frames should allow for

adequate notice to be provided to the holders of all open positions in options on the Airline, Natural Gas, Pharmaceutical, and Securities Broker/Dealer Indices and other market participants.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-99-01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41170; File No. SR-MSRB-99-1]

March 15, 1999.

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-38 on Consultants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 4, 1999, 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-99-1) as described in Items I, II, and III below, which Items have been prepared by the Board. The MSRB has designated this proposal as one constituting a stated policy, practice or interpretation with respect to the enforcement of an existing rule under Section 19(b)(3)<sup>3</sup> of the Act which renders the proposal effective upon receipt of the 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-38 on consultants. The text of the proposed rule change is as follows in *italics*.

\* \* \* \* \*

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR. 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3).

#### Rule G-38 Question and Answer Agreement to Jointly Seek Underwriting Assignments

*Q: Dealer Firm A and Dealer Firm B have entered into an agreement to jointly seek underwriting assignments. As part of this agreement, the two dealers have jointly submitted proposals to issuers. Dealer Firm A ultimately is selected to underwrite a negotiated sale of a primary offering of municipal securities (i.e., "municipal securities business" as defined in Rule G-37). Dealer Firm B will not act as an underwriter on this offering but will assist Dealer Firm A in structuring the transaction. Dealer Firm A will compensate Dealer Firm B for the work it provides on the transaction. Is Dealer Firm B a consultant to Dealer Firm A pursuant to Rule G-38, on consultants?*

*A. Yes. Dealer Firm B is a consultant to Dealer Firm A because, pursuant to the definition of consultant in Rule G-38(a)(i), Dealer Firm B is: (1) used by Dealer Firm A to obtain municipal securities business, (2) through direct or indirect communication with an issuer on behalf of Dealer Firm A, and (3) the communication is undertaken by Dealer Firm B in exchange for, or with the understanding of receiving, payment from Dealer Firm A. Moreover, Dealer Firm B is not exempt from the definition of consultant since it is not a municipal finance professional, and its sole basis of compensation is not the actual provision of legal, accounting or engineering advice, services or assistance. In addition, the Board believes that, even though Dealer Firm B is providing substantive work on the transaction, any dealer used by another dealer (other than a member of the syndicate) to assist in obtaining or retaining municipal securities business is acting as a consultant pursuant to Rule G-38.*

#### 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.

<sup>13</sup> According to the Amex, December 1999 will be the furthest expiration months for non-LEAPs on the Indices, for purposes of the reversion of position and exercise limits to their original levels. Per telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Marianne Duffy, Division of Market Regulation, SEC, on January 28, 1999.

<sup>14</sup> *Id.* and telephone conversation between Scott Van Hatten, Legal Counsel, Amex, and Heather Traeger, Division of Market Regulation, SEC, on March 11, 1999.

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

On January 17, 1996, the Commission approved Board Rule G-38, on consultants.<sup>4</sup> The Board adopted the rule because it was concerned about dealers' increasing use of consultants to obtain or retain municipal securities business, notwithstanding the requirements of: (i) Rule G-37 concerning political contributions and prohibitions on municipal securities business; (ii) Rule G-20 concerning gifts and gratuities; and (iii) Rule G-17 concerning fair dealing. Rule G-38 requires dealers to disclose information about their consultant arrangements to issuers and the public. Recently, the Board received an inquiry from a dealer concerning the application of Rule G-38 to instances in which dealers have entered into agreements to jointly seek underwriting assignments. The Board has determined to publish this fourth notice of interpretation<sup>5</sup> which sets forth, in question-and-answer format, to provide general guidance on Rule G-38 and to assist the municipal securities industry, and, in particular, brokers, dealers, and municipal securities dealers in understanding and complying with Rule G-38. The Board will continue to monitor the application of Rule G-38, and, from time to time, will publish additional notices of interpretations, as necessary.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)<sup>6</sup> of the Act, which provides, among other things, 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.

*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 proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board and, therefore, has become effective pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act, and subparagraph (f) of Rule 19b-4 thereunder.<sup>8</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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-99-1 and should be submitted by April 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 99-6830 Filed 3-19-99; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41171; File No. SY-NYSE-99-8]

**Self-Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Listing Fees**

March 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 16, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

Paragraph 902.02(C) of the Exchange's Listed Company Manual ("Manual") contains the schedule of current continuing annual listing fees for NYSE-listed companies. The Exchange proposes to amend Paragraph 902.02(c) of the Manual. Paragraph 902.02(C) currently establishes a maximum continuing annual listing fee of \$500,000 for each issue (i.e., security) listed by an issuer. The NYSE proposes to amend Paragraph 902.02(C) to apply a \$500,000 cap to all securities listed by an issuer, other than derivative products, fixed-income products, and closed-end funds. The Exchange seeks accelerated approval of the proposed

<sup>4</sup> Securities Exchange Act Release No. 36727 (January 17, 1996), 61 FR 1955 (January 24, 1996). The rule became effective on March 18, 1996.

<sup>5</sup> See Securities Exchange Act Release No. 36950 (March 11, 1996), 61 FR 10828 (March 15, 1996), *MSRB Reports*, Vol. 16, No. 2 (June 1996) at 3-5; Securities Exchange Act Release No. 37997 (November 29, 1996), 61 FR 64781 (December 6, 1996), *MSRB Reports*, Vol. 17, No. 1 (January 1997) at 15; and Securities Exchange Act Release No. 40499 (September 29, 1998), 63 FR 53739 (October 6, 1998), *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 13. See also *MSRB Manual* (CCH) at paragraph 3686.

<sup>6</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.