

eliciting the pertinent information regarding the legal status of the issuer and the validity of the securities to be listed. By instituting these alternative procedures, the Commission believes that eliminating the filing of certain corporate documents and an opinion of counsel is reasonable and will allow issuers to list their securities on the Exchange more quickly and less expensively. Additionally, the Commission notes that electronic access to many of the corporate documents previously required provides an additional safeguard and source of information for the Exchange and the public.

The Commission also believes that the proposed rule change will facilitate securities transactions and benefit investors by modernizing, simplifying, and conforming the Exchange's listing procedures to current business practices. For example, the Commission believes that the Exchange rules relating to the form of securities and lost security holders, limitations on transfer agents located outside of New York, and sector-specific listing requirements are no longer necessary, given technological advances and general developments in the capital markets. Similarly, eliminating the PLEO process simplifies the listing process significantly for issuers. Finally, changes to the rules relating to shareholder approval for the issuance of a security in certain circumstances (e.g., Exchange Rule 713), conforms the Exchange's listing standards to common business practice.

Lastly, the Commission believes that the proposed rule change will facilitate securities transactions by creating consistent rules and processes governing the listing of securities on both Nasdaq and Amex. Because the listing qualifications of both Nasdaq and Amex are now handled by the Nasdaq-Amex Listing Qualifications Department, the Commission believes that consistent rules and practices between both marketplaces will enable issuers to list securities on the Exchange much more quickly and will enable the Exchange to more efficiently review and process listing applications.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-99-39), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42538; File No. SR-MSRB-00-01]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Supervision of Correspondence With the Public

March 16, 2000.

#### I. Introduction

On January 7, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission"), 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> a proposed rule change amending MSRB Rules G-8, G-9, and G-27. The proposed rule change was published for comment in the **Federal Register** on February 10, 2000.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

#### II. Description of the Proposal

The Board has filed proposed amendments to MSRB Rules G-8, on books and records, G-9, on record retention, and G-27, on supervision. The proposed rule change will revise the Board's supervision and record retention rules to provide dealers with flexibility in developing reasonable procedures for the review of correspondence with the public. The amendments also accommodate the growing use of correspondence sent and received in electronic format while still providing for effective supervision. The Board has also filed with the Commission a draft notice that will provide guidance to dealers on how to implement these rule changes. The proposed rule change and accompanying notice are modeled after and designed to conform to the rules and guidance of the National

Association of Securities Dealers ("NASD").<sup>4</sup>

The Board has determined to adopt rules changes substantially similar to those of the NASD. The Board believes that conforming its rule language to the language in the NASD rules will help ensure a coordinated regulatory approach to the supervision of correspondence. In addition, in connection with Commission approval of the proposed rule change, the Board will issue a notice to provide guidance to dealers on implementing the proposed rule change. This guidance has been modeled after NASD Notices to Members 98-11 and 99-03 and is described below.

#### *Supervision of Municipal Securities Representatives*

The proposed amendments to MSRB Rule G-27(d), provide, among other things, that a dealer must establish procedures for the review by a designated principal of each municipal securities representative's incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence with the public relating to the municipal securities activities of such dealer. The procedures must be designed to provide reasonable supervision of each municipal securities representative and must be described in the dealer's written supervisory procedures. Implementation and execution of these procedures must be clearly evidenced, and the evidence must be maintained and be made available upon request to a registered securities association or the appropriate regulatory agency as defined in Section 3(a)(34)<sup>5</sup> of the Act.

#### *Procedures for Review of Correspondence*

Currently, MSRB Rule G-27(c)(vii)(C) requires each dealer to establish procedures for the review and written approval by a designated principal of all correspondence pertaining to the solicitation or execution of transactions in municipal securities. Under proposed Rule G-27(d)(ii), a review of each item of correspondence will no longer be required. Dealers will be given flexibility to develop procedures for the review of correspondence relating to the dealer's municipal securities activities—both incoming and outgoing, written or electronic—tailored to the nature and size of the dealer's business and customers.

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

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

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

<sup>3</sup> Securities Exchange Act Release No. 42385 (Feb. 3, 2000), 65 FR 6669.

<sup>4</sup> See Securities Exchange Act Release No. 39510 (Dec. 31, 1997), 63 FR 1131 (Jan. 8, 1998); NASD Rule 3010; and NASD Notices to Members 98-11 and 99-03.

<sup>5</sup> 15 U.S.C. 78c(a)(34).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

With respect to incoming written (*i.e.*, non-electronic) correspondence directed to municipal securities representatives and related to the municipal securities activities of the dealer, the proposal would require review of the correspondence to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. The proposed rule change does not require review of all correspondence prior to use or distribution. However, any dealer that does not conduct electronic or manual pre-use review of each item of correspondence will be required to regularly educate and train its associated persons as to the dealer's procedures governing review of correspondence, document such education and training, and monitor to ensure compliance with such procedures.

#### *Retention of Correspondence*

The proposed rule change includes amendments to MSRB Rules G-8(a)(xx), G-9(b)(viii) and (xiv), and G-27(d)(i), (ii), and (iii) requiring each dealer to preserve correspondence of municipal securities representatives relating to municipal securities activities and maintain the records of written supervisory procedures, education and training required under Rule G-27(c) and (d) for three years. The proposed rule change also requires the names of the persons who prepared and reviewed correspondence to be ascertainable from the retained records and the records must be made available, upon request, to the appropriate enforcement agency (*i.e.*, NASD or federal bank regulatory agency).

#### *Draft Notice-Guidelines for Supervision and Review*

The notice to dealers ("Notice to Dealers") will provide guidance on how to implement the proposed rule change. In particular, the Notice to Dealers states that in adopting review procedures pursuant to Rule G-27(d)(i), dealers must:

- Specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence;
- Identify how supervisory reviews will be conducted and documented;
- Identify what types of correspondence will be pre- or post-reviewed;
- Identify the organizational position(s) responsible for conducting review of the different types of correspondence;

- Specify the minimum frequency of the reviews for each type of correspondence;

- Monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and

- Periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The Notice to Dealers also states that in conducting reviews, dealers may use reasonable sampling techniques. As an example of appropriate evidence of review, e-mail related to the dealer's municipal securities activities may be reviewed electronically and the evidence of review may be recorded electronically.

In developing supervisory procedures for the review of correspondence with the public pursuant to Rule G-27(d)(ii), the Notice to Dealers states that each dealer must consider its structure, the nature and size of its business, other pertinent characteristics, and the appropriateness of implementing uniform firm-wide procedures or tailored procedures (*i.e.*, by specific function, office/location, individual, or group of persons).

The Notice to Dealers also provides guidance on adopting review procedures pursuant to Rule G-27(d)(ii), and states that dealers must, at a minimum:

- Specify procedures for reviewing municipal securities representatives, recommendations to customers;
- Require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers;
- Consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients); and
- Consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media).

In addition, the Notice to Dealers provides that supervisory policy and procedures must also:

- Provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained;

- Describe any dealer standards for the content of different types of correspondence; and

- Prohibit municipal securities representatives' and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the dealer. For example, the Board would expect dealers to prohibit correspondence with customers from employees' home computers or through third party systems unless the dealer is capable of monitoring such communications.

The Notice to Dealers also states that the method used for conducting reviews of incoming, written correspondence to identify customer complaints and funds may vary depending on the dealer's office structure. Where the office structure permits review of all correspondence, dealers should designate a municipal securities representative or other appropriate person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the municipal securities representative whose correspondence is opened and review. Unregistered persons who have received sufficient training to enable them to identify complaints and funds would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence<sup>6</sup> prior to use or distribution, appropriate procedures that could be adopted include the following:

- Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis;
- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis;
- Communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

<sup>6</sup> Amended language per telephone conversation between Carolyn Walsh, Assistant General Counsel, MSRB, and Ira L. Brandriss, Staff Attorney, Commission, on February 3, 2000.

### III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C)<sup>8</sup> of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will provide dealers with flexibility in adopting procedures for reviewing municipal securities representatives' public correspondence while establishing minimum requirements, guidelines, and standards governing the supervisory procedures dealers may adopt. The Commission also believes that the proposal is consistent with the Act in allowing dealers to use new technology, such as e-mail and the internet, while still providing for appropriate supervision and review. Moreover, the Commission believes that the proposal will protect existing and prospective customers by ensuring that customer complaints, funds, and securities are handled properly.

#### *a. New Rule G-27(d)(i)*

New Rule G-27(d)(i) requires dealers to establish procedures for the review by a designated principal of the incoming and outgoing written and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of the dealer. The Commission believes that new Rule G-27(d)(i) will protect investors and the public interest by requiring designated principals to review some of each municipal securities representative's correspondence, regardless of the method used for the review of correspondence pursuant to new Rule G-27(d)(ii). In this regard, the Commission notes the proposal requires dealers to adopt procedures designed to reasonably supervise each municipal securities representative. The Commission believes this requirement should ensure that appropriate persons within the firm will undertake to

supervise the activities of the firm's municipal securities representatives.

In addition, the Notice of Dealers provides guidance on adopting review procedures pursuant to Rule G-27(d)(i) and, at a minimum, requires dealers to: (i) specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence; (ii) identify how supervisory reviews will be conducted and documented; (iii) identify what types of correspondence will be pre- or post-reviewed; (iv) identify the organizational position(s) responsible for conducting review of the different types of correspondence; (v) specify the minimum frequency of the reviews for each type of correspondence; (vi) monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and (vii) periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The Commission believes that these requirements will provide guidance to dealers in developing policies for supervising public correspondence and to municipal securities representatives in complying with the dealer's policies. The requirements should help to ensure that dealers carefully consider the supervisory procedures appropriate for different types of communications, closely monitor compliance with the dealer's policies, and periodically reevaluate their policies and procedures. The Commission expects dealers to monitor the effectiveness of their supervisory policies and procedures and to promptly make any necessary revisions.

#### *b. New Rule G-27(d)(ii)*

New Rule G-27(d)(ii) will require dealers to develop written policies and procedures that are appropriate for the dealer's business, size, structure, and customers for the review of all municipal securities representatives' incoming and outgoing written and electronic correspondence with the public relating to its business. The proposal also requires dealers to adopt review procedures specifically designed to identify and handle customer complaints and to ensure that customer funds and securities are handled properly. The Commission believes the proposal will provide dealers with flexibility in adopting and implementing supervisory procedures while establishing minimum requirements, guidelines, and standards governing the supervisory procedures a dealer may adopt.

The Commission believes that whenever practicable, prior review of incoming written correspondence to identify customer complaints, funds and securities should be mandated, to protect customer interests and possibly reduce dealers' potential liability. In some cases, however, prior review of incoming correspondence is not feasible. In such cases, the Commission believes that requiring dealers to employ alternative procedures reasonably designed to assure adequate handling of customer complaints, funds and securities is reasonable. The Commission believes that dealers that do not require prior review of all written correspondence should require, at a minimum, some combination of those alternatives provided by the MSRB as an example in the Notice to Dealers, or similar procedures, rather than relying on one alternative procedure. The Commission notes that under MSRB Rule G-27(d)(ii), a dealer that chooses not to require review of public correspondence prior to use or distribution must educate employees about the dealer's current correspondence procedures, document the employees' education and training, and ensure that the dealer's policies are implemented and followed.

The Notice to Dealers provides guidance on adopting review procedures pursuant to Rule G-27(d)(ii) and, at a minimum, requires dealers to: (i) Specify procedures for reviewing municipal securities representatives' recommendations to customers; (ii) require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers; (iii) consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients; (iv) consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media); (v) provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained; and (vi) describe any dealer standards for the content of different types of correspondence.

As discussed above, the Notice to Dealers also provides alternative review

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78o-4(b)(2)(C).

procedures to identify customer complaints and funds. These procedures include: (i) Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis; (ii) maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis; (iii) communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and (iv) branch examination verification that the procedures are being followed.

The Commission believes that the standards and guidelines set forth in new Rule G-27(d)(ii) and the Notice to Dealers will help to ensure that dealers continue to provide appropriate supervision of the public correspondence of their municipal securities representatives and that customer complaints, funds, and securities are properly handled. For example, considering the complaint and the municipal securities representative's overall disciplinary history will help to ensure that dealers implement supervisory procedures appropriate for each representative. In this regard, the Commission would expect a dealer to consider providing heightened supervision for a representative with a history or pattern of customer complaints, disciplinary action, or arbitrations. Moreover, the Commission notes that the requirements in MSRB Rule G-27 and the Notice to Dealers are minimum requirements. The Commission expects each dealer to implement any additional procedures the dealer believes are necessary to provide appropriate supervision of all its municipal securities representatives and employees.

#### *c. Electronic Correspondence*

The Commission believes that the requirements specific to electronic communications both accommodate the growing use of correspondence sent and received in electronic format and help to ensure that dealers adopt appropriate supervisory procedures. In this regard, the Commission notes that the Notice to Dealers provides that a dealer's policies and procedures must prohibit municipal securities representatives' and other employees' use of electronic communications to the public unless those communications are subject to supervisory and review procedures

developed by the dealer. The Notice to Dealers also states that the MSRB expects dealers to prohibit communications with the public from employees' home computers or through third party computer systems unless the dealer is capable of monitoring the communications.

#### *d. Books and Records*

The Commission believes that it is reasonable for the MSRB to amend MSRB Rules G-8 and G-9 to require firms to maintain and preserve for three years (i) all written and electronic communications received and sent relating to the dealer's conduct with respect to municipal securities and (ii) records of compliance with MSRB Rule G-27(c) and (d). The Commission believes that requiring dealers to maintain and make available to the appropriate regulatory agency evidence that supervisory procedures have been implemented and carried out will help to ensure that dealers comply with the new requirements of Rule G-27. Moreover, the Commission believes that requiring the names of the persons who prepared and reviewed the correspondence to be ascertainable from the retained records will help to ensure that only appropriate persons prepare and supervise public correspondence.

#### **IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>9</sup> of the Act, that the proposed rule change (SR-MSRB-00-01) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-42537; File No. SR-NASD-99-77]**

#### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Mutual Fund Quotation Service**

March 16, 2000.

#### **I. Introduction**

On January 4, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned

subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to change the annual listing fees for the Mutual Fund Quotation Service ("MFQS" or "Service").

The proposed rule change was published for comment in the **Federal Register** on February 9, 2000.<sup>3</sup> No comments were received on the proposal. This order approves the proposal.

#### **II. Description of the Proposal**

In its proposed rule change, Nasdaq proposed amendments to Rule 7090 to change the annual listing fees for the MFQS, which collects and disseminates data pertaining to the value of open-end and closed-end funds. The MFQS disseminates the valuation data for over 11,000 funds. The Service facilitates this process by providing for the automated entry, through a browser-based application, of pricing data by a fund and a fund's pricing agent.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.<sup>4</sup> The MFQS has two "listss" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements.<sup>5</sup> If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in newspaper fund tables and is also eligible for dissemination over Nasdaq's Level 1 service,<sup>6</sup> which is distributed by market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for

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

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

<sup>3</sup> Securities Exchange Act Release No. 42376 (February 2, 2000), 65 FR 6340.

<sup>4</sup> See NASD Rule 6800.

<sup>5</sup> *Id.*

<sup>6</sup> Nasdaq Level 1 Service is a subscription-based data service that "includes the following data: (1) inside bid/ask quotations calculated for securities listed in the Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series." NASD Rule 7010(a).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).