

noted, and that this minimum bid amount is needed to ensure that the price determined by the Dutch auction is fair and equitable.

## 2. Statutory Basis

The Exchange believes that the revised Dutch auction procedure for the Permit lease pool will more effectively ensure that the amounts paid for Permits by each successful bidder are fair and equitable. As such, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4)<sup>6</sup> of the Act in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. 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, DC 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-00-05 and should be submitted by April 12, 2000.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

## IV. Commission's Findings and Other Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(4),<sup>7</sup> because the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges.

CBOE Rule 3.27 provides for a Permit lease pool to distribute Permits originating from the transfer of the options business of the NYSE to CBOE. Lease payments on the Permits are paid to persons identified by the NYSE. Under the existing Dutch auction rules, there is no limit on the monthly bid for a Permit. Consequently, a low bid can, and did, succeed as the lease amount for all Permits, even if the average of the bids is significantly higher (indicating a higher market value for the Permits). The proposed rule change establishes a minimum bid level of \$1,000 for the Permits. The Commission finds that establishing this minimum bid is a reasonable and appropriate measure to attempt to prevent undervaluing the trading rights conferred by the Permits.

CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Specifically, the Exchange requests that the Commission accelerate the operative date of the proposed rule change so the Exchange can employ the revised Dutch auction procedures in the next scheduled auction, that of March 15, 2000. The Exchange believes that accelerating approval of the proposed rule change will enable the Exchange to implement a procedure that more fairly and equitably allocates the cost of the lease pool Permits for the benefit of the lease payment recipient.<sup>8</sup> The Commission believes that permitting the Exchange to use the revised procedures in the next Dutch auction would ensure that the Permits were not significantly undervalued at another auction. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,<sup>9</sup> to approve the proposed rule change prior to the thirtieth day after the date of

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> Telephone conversation between Chris Hill, Attorney, CBOE, and Heather Traeger, Attorney, Division of Market Regulations, SEC, on March 7, 2000.

<sup>9</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

publication of the notice of filing thereof in the **Federal Register**.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-00-05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-7068 Filed 3-21-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42533; File No. SR-MSRB-00-04]

### **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**

March 15, 2000.

On March 2, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, 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> The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretive guidance concerning Rule G-37, on political contributions and prohibitions on municipal securities business. The Board has designated this proposed rule change 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,<sup>3</sup> which renders the proposed rule change 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.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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)(A).

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

The Board has filed a proposed rule change consisting of a notice of interpretation, in question-and-answer format, concerning Rule G-37 (hereafter referred to as "the proposed rule change"). The proposed rule change is as follows in *italic*:

### SCOPE OF WAIVER PROVISION IN RULE G-37(i)

*Q: If an enforcement agency grants an exemption from a ban on municipal securities business pursuant to Rule G-37(i), may this exemption be applied retroactively so that any municipal securities business engaged in after the ban had gone into effect but prior to the date on which the exemption was granted would not be viewed as a Rule G-37 violation?*

*A: Rule G-37(i) allows the enforcement agencies to exempt a dealer from a ban on municipal securities business. It is the Board's view that such an exemption is only effective as of the date of the exemption. Rule G-37(i) does not contain a provision allowing for the retroactive application of the exemption. Thus, a dealer would violate Rule G-37 if, prior to the date of the exemption, the dealer engaged in municipal securities business with an issuer while subject to a ban with this issuer because of a political contribution. As with any violation of a Board rule, the enforcement agencies have discretion in determining the type and extent of enforcement action appropriate for such violation, in light of the specific facts and circumstances. If an enforcement agency has granted an exemption to a dealer from the ban on municipal securities business, the facts and circumstances considered by such agency in granting the exemption could appropriately also be considered (together with any other relevant facts and circumstances) in determining what, if any, enforcement action should be taken against such dealer if it had engaged in municipal securities business after the ban on such business became effective but prior to the date on which the exemption was granted.*

\* \* \* \* \*

## 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 Section 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

On April 7, 1994, the Commission approved Board Rule G-37, on political contributions and prohibitions on municipal securities business.<sup>4</sup> 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 nine prior notices of interpretation which set forth, in question-and-answer format, general guidance on Rule G-37.<sup>5</sup> 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.<sup>6</sup> Recently, the Board was asked about the scope of the waiver provision in Rule G-37(i). Accordingly, the Board is publishing this tenth set of questions and answers.

#### 2. Basis

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,<sup>7</sup> which requires, in pertinent part, 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.

### 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 since it applies 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 proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section 19(b)(3)(A) of the Act,<sup>8</sup> which renders the proposed rule change effective upon receipt of this filing by the Commission.

## 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-00-04 and should be submitted by April 12, 2000.

<sup>4</sup> Securities Exchange Act Release No. 33868, 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

<sup>5</sup> See *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 11-16; Vol. 14, No. 4 (Aug. 1994) at 27-31; Vol. 14, No. 5 (Dec. 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; Vol. 15, No. 2 (July 1995) at 3-4; Vol. 16, No. 1 (Jan. 1996) at 31; Vol. 16, No. 3 (Sept. 1996) at 35-36; Vol. 17, No. 3 (Oct. 1997) at 11-12; and Vol. 18, No. 2 (Aug. 1998) at 11-12. See also *MSRB Rule Book* (January 1, 2000) at 195-204.

<sup>6</sup> See Securities Exchange Act Release No. 34161 (June 6, 1994, 59 FR 30379 (June 13, 1994) (File No. SR-MSRB-94-6) and Securities Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994) (File No. SR-MSRB-94-15).

<sup>7</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-7034 Filed 3-21-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42536; File No. SR-NASD-99-75]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to ECN and ATS Participation in the ITS/CAES System

March 16, 2000.

#### I. Introduction

On December 27, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to permit Electronic Communication Networks ("ECNs") and Alternative Trading Systems ("ATSs")<sup>3</sup> to register as market makers in listed securities using Nasdaq quotation and trading facilities.

The proposed rule change was published for comment in the **Federal Register** on February 1, 2000.<sup>4</sup> One comment was received on the proposal.<sup>5</sup>

This order approves the proposed rule change.

#### II. Description

Nasdaq operates a trading system known as the Computer Assisted Execution System ("CAES"), which allows NASD member firms to direct orders in Consolidated Quotation System ("CQS") securities ("i.e., listed securities) to market makers for execution. Through CAES, NASD order-entry firms and market makers can participate in the "third market"<sup>6</sup> by entering market and limit orders in exchange-listed securities to be executed against other market makers quoting in those securities. CAES also serves as the NASD's interface with the Intermarket Trading System ("ITS"), which links the national securities exchanges.<sup>7</sup>

Traditional market makers actively make markets in a large number of New York Stock Exchange and American Stock Exchange listed stocks in the third market. While many NASD member firms act as third market makers today, Nasdaq believes that certain enhancements to CAES could provide additional benefits to all NASD members. The enhancements would allow CAES Market Makers to compete more effectively with all markets by providing the best possible executions for investors, thereby improving the national market system.

Accordingly, Nasdaq proposes to allow ECNs and ATSs to choose to be ITS/CAES Market Makers by amending NASD Rules 5210(e), 5220 and 6320, to include ECNs and ATSs within the definition of "ITS/CAES Market Maker" and "CQS Market Maker," and to require the execution of an ECN and ATS addendum to the ITS/CAES Market Maker application agreement. These changes would allow ECNs and ATSs to compete on an equal basis with other market makers, yet also require ECNs and ATSs to assume the additional obligations and restrictions imposed upon ITS/CAES Market Makers by the ITS Plan and NASD rules. An ECN or ATS that chooses to exercise this option of registration, consequently, would be required to post two-sided quotations,

be firm for the price and size of those quotations, and participate in CAES on the same terms as other ITS/CAES Market Makers.<sup>8</sup> This selection would also impose the additional compliance duties traditionally required of market makers participating in ITS/CAES, including, for example, the rules concerning pre-opening application, trade through, locked and crossed markets, and block transactions.<sup>9</sup> ECNs and ATSs would assume the added responsibility for implementing all technological and programming modifications to their internal systems to demonstrate compliance with these requirements.

In registering as ITS/CAES Market Makers, ECNs and ATSs will be required to operate on terms that are the same as traditional CAES Market Makers. In particular, within the ITS/CAES market, there will be an absolute prohibition against quote access fees. Nasdaq believes that, because of the CAES interface with ITS, the implementation on quote access fees would be infeasible within CAES and would not be consistent with the terms of the ITS Plan.

In addition, as discussed above, the NASD intends to modify the operation of CAES to accommodate ECN and ATS participation. In the current CAES environment, all orders are executed against market makers through an automatic executive process. The system delivers a report of a completed execution at the market maker's quoted price and size when another CAES market maker or exchange chooses to access that market maker's quote. Because ECNs and ATSs are reluctant to participate within the current automatic execution environment, Nasdaq is working on modifications to CAES to facilitate order delivery interaction for any ITS/CAES Market Maker that chooses to operate in an order delivery mode (with an automated response to the delivered orders). The change would make it clear that all ITS/CAES Market Makers could receive the delivery of an order (as opposed to an execution report), and immediately accept or decline that delivery by automated

<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.

<sup>3</sup> The term ECN is defined, with certain exceptions, as any electronic system that widely disseminates to third parties orders entered into the ECN by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part. See Exchange Act Rule 11Ac1-1(a)(8). The term ATS is defined more broadly as any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Exchange Act Rule 3b-16; and (2) that does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) discipline subscribers other than by exclusion from trading. See Regulation ATS, Sec. 242.300(a). Essentially, an ECN is a type of ATS.

<sup>4</sup> See Securities Exchange Act Release No. 42353 (January 20, 2000), 65 FR 4857.

<sup>5</sup> See letter to Jonathan G. Katz, Secretary, Commission, from Sam Scott Miller, Orrick,

Herrington & Sutcliffe, LLP, on behalf of MarketXT, dated March 3, 2000 ("MarketXT Letter").

<sup>6</sup> The third market refers to over-the-counter trading of exchange-listed securities.

<sup>7</sup> ITS is a communications network designed to facilitate intermarket trading in exchange-listed securities by linking the NASD and the national securities exchanges. Operation of ITS is governed by a national market system plan known as the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("ITS Plan").

<sup>8</sup> With respect to the two-sided quotation obligation, ECN and ATS ITS/CAES Market Makers will be permitted to auto-quote in 100 share lots away from the national best bid and offer ("NBBO") to the extent that a particular ECN or ATS does not have a customer order to represent. If an ECN or ATS ITS/CAES Market Maker quotation is accessed because such quotation becomes the NBBO or is subject to another rule requiring its execution, the ECN or ATS ITS/CAES Market Maker will be required to assume a proprietary position in that security.

<sup>9</sup> NASD Rules 5240, 5262, 5263, and 5264, respectively.