

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-99-22) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

[FR Doc. 00-8648 Filed 4-6-00; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42598; File No. SR-EMCC-99-11]

#### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions in Fee Schedule

March 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 22, 1999, the Emerging Markets Clearing Corporation ("EMCC") 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 EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change consists of changes to EMCC's fee schedule.

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

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

EMCC has determined to charge its trade input fee so that inter-dealer broker members pay \$1.50 per compared bond side and dealer members pay \$2.00 per compared bond side.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act<sup>3</sup> and the rules and regulations thereunder applicable to EMCC because it provides for the equitable allocation of dues, fees, and other charges among EMCC's participants.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

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

One comment was received by EMCC.<sup>4</sup> The commenter stated its belief that EMCC's additional fee makes it cost prohibitive to be a member of EMCC.<sup>5</sup>

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>6</sup> of the Act and Rule 19b-4(f)(2)<sup>7</sup> promulgated thereunder because the proposal establishes or changes a due, fee, or charge imposed by EMCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> Letter from Vincent G. Rayano, Vice President, Tullett and Tokyo Securities, Inc., to Karen Saperstein, General Counsel and Secretary, EMCC (November 23, 1999).

<sup>5</sup> In its reply letter, EMCC responded to the commenter by stating that interdealer broker members, such as the commenter, will pay a lower fee under the revised fee schedule than it previously was paying. Letter from Keith C. Kanaga, Managing Director, EMCC, to Vincent G. Rayano, Vice President, Tullett and Tokyo Securities, Inc. (December 7, 1999).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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 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, NW., Washington, DC 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR-EMCC-99-11 and should be submitted by April 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 00-8491 Filed 4-6-00; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42608; File No. SR-MSRB-00-05]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; 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

April 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that 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 as 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 MSRB is proposing a notice of interpretation, in question and answer format, concerning MSRB Rule G-38, on consultants. The purpose of the proposed rule change is to provide interpretative guidance concerning MSRB Rule G-38. The proposed rule change is as follows:

#### **Rule G-38 Questions and Answers Concerning Information about Consultants' Political Contributions and Payments to State and Local Political Parties**

##### **General Requirements of New Amendments**

1. Q: What are the new amendments to rule G-38 about?

A: The amendments will require dealers to collect from their consultants, and to disclose to the Board on revised Form G-37/G-38, information regarding certain contributions to issuer officials and certain payments to state and local political parties made by such consultants.

2. Q: What political contributions and political party payments are subject to the new reporting requirement?

A: This depends upon whether the consultant is an individual or a company. If the consultant is an individual, then the contributions and payments that are covered (to the extent reportable under the rule) are those of (1) that individual and (2) any political action committee controlled by such individual. If the consultant is a company, then the contributions and payments that are covered (to the extent reportable under the rule) are those of (1) that company, (2) any partner, director, officer or employee of such company who communicates with an issuer to obtain municipal securities

business on behalf of the dealer, and (3) any political action committee controlled by such company or any of the individuals identified in the immediately preceding clause (2).

3. Q: May the dealer enter into a Consultant Agreement with either an individual or a company?<sup>3</sup>

A: Yes, provided that the dealer must enter into a Consultant Agreement with the actual party that is serving as the consultant. For example, if the consultant is in effect a company with several employees making actual contact with issuers on the dealer's behalf, a Consultant Agreement entered into only with one of these employees may not, depending upon all the relevant facts and circumstances, satisfy the requirement that the dealer enter into a Consultant Agreement with the consultant.

4. Q: Must a Consultant Agreement include any provisions regarding a consultant's reportable political contributions and reportable political party payments?

A: Yes. A dealer is required to include within its Consultant Agreement a provision to the effect that the consultant agrees to provide the dealer each calendar quarter with either (1) a listing of reportable political contributions to official(s) of an issuer and reportable payments to political parties of states and political subdivisions during such quarter, or (2) a report that no reportable political contributions or reportable political party payments were made during such quarter, as appropriate.

5. Q: Which contributions to issuer officials made by consultants are reportable under the rule?

A: Rule G-38(a)(vi) defines the term "reportable political contribution" to mean, if the consultant has had direct or indirect communication with an issuer on behalf of the dealer or obtain or retain municipal securities business for such dealer, a political contribution to an official(s) of such issuer made by any contributor referred to in rule G-38(b)(i) (see Question and Answer number 2) during the period beginning six months prior to such communication and ending six months after such communication.

6. Q: Which payments to state and local political parties made by consultants are reportable under the rule?

A: Rule G-38(a)(vii) defines the term "reportable political party payment" to

mean, if a political party of a state or political subdivision operates within the geographic area (e.g., city, county and state parties) of an issuer with which the consultant has had direct or indirect communication to obtain or retain municipal securities business on behalf of the dealer, a payment to such party made by any contributor referred to in rule G-38(b)(i) (see Question and Answer number 2) during the period beginning six months prior to such communication and ending six months after such communication.

7. Q: Is there a de minimis exception for the reporting of political contributions and political party payments?

A: Yes. The de minimis exception for contributions to official(s) of an issuer provides that a consultant need not provide to a dealer information about contributions of the consultant (but only if the consultant is an individual) or by any partner, director, officer or employee of the consultant (if the consultant is a company) who communicates with issuers to obtain municipal securities business on behalf of the dealer made to any official of an issuer for whom such individual is entitled to vote if such individual's contributions, in total, are not in excess of \$250 to each official of such issuer, per election.

Similarly, the de minimis exception for political party payments provides that a consultant need not provide to a dealer information about payments of the consultant to political parties of a state or political subdivision (but only if the consultant is an individual) or by any partner, director, officer or employee of the consultant (if the consultant is a company) who communicates with issuers to obtain municipal securities business on behalf of the dealer and who is entitled to vote in such state or political subdivision if the payments made by the individual, in total, are not in excess of \$250 per political party, per year.

Again, the de minimis exception applies only to contributions or payments by individuals. There is no de minimis exception for contributions by the consultant if it is a company or for any PAC controlled by the company or individuals covered by the rule.

8. Q: If a consultant makes political contributions during a particular quarter but these contributions do not meet the definition of "reportable political contribution" as defined in rule G-38, is the consultant required to report any information about its political contributions to the dealer?

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

<sup>3</sup> The MSRB changed the text of question three from, "May the dealer choose whether the consultant is an individual or a company?" See letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 30, 2000.

<sup>3</sup> The MSRB changed the text of question three from, "May the dealer choose whether the consultant is an individual or a company?" See letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 30, 2000.

A: The consultant is required to report to the dealer that it made no reportable political contributions during the quarter.

9. Q: With respect to a particular issuer, if a consultant is communicating with one individual but has made a contribution to a different individual, would the consultant report this contribution to the dealer? For example, if the dealer is seeking municipal securities business from City A and its consultant communicates with the Mayor of the City, would a non-de minimis political contribution to the City's Comptroller (an official of the issuer) have to be reported?

A: Yes. A consultant must report and a dealer must disclose contributions with respect to those "issuers" from which a consultant is seeking municipal securities business on behalf of the dealer, regardless of whether contributions are going to and communications are occurring with the same or different personnel within that particular issuer.

10. Q: What is the date that establishes the obligation for the collection of reportable political contributions and reportable political party payments?

A: The date of the consultant's communication with the issuer to obtain or retain municipal securities business on behalf of the dealer is the key date with respect to determining whether a contribution or payment is reportable. For the quarter in which a consultant first communicates with the issuer, the dealer is required to collect from the consultant its reportable political contributions and reportable political party payments for such quarter and, pursuant to the six-month look-back, for the six-month period preceding such first communication.

11. Q: How do the "look-back" and "look-forward" provisions operate?

A: Pursuant to the look-back provision, a consultant must disclose to the dealer the reportable political contributions and reportable political party payments made by the consultant during the six months prior to the date of the consultant's communication with the issuer. These contributions and payments become reportable in the calendar quarter in which the consultant first communicates with the issuer. Of course, any reportable political contributions and reportable political party payments made during the period that the consultant continues to communicate with the issuer are required to be disclosed. Once communication with an issuer ceases, the consultant still must disclose information with respect to reportable

political contributions and reportable political party payments made during the ensuing six months pursuant to the look-forward provision. Contributions and payments made simultaneously with or after the consultant's first communication with the issuer are reportable in the calendar quarter in which they are made.

12. Q: When does the requirement cease for a dealer to collect contribution and payment information from its consultants?

A: The requirement ceases when a consultant agreement has been terminated. Of course, dealers should not attempt to avoid the requirements of rule G-38 by terminating a consultant relationship after directing or soliciting the consultant to make a political contribution to an issuer official after such termination. Rule G-37(d) prohibits a dealer from doing any act indirectly which would result in a violation of rule G-37 if done directly by the dealer. Thus, a dealer may violate rule G-37 by engaging in municipal securities business with an issuer after directing or soliciting any person to make a contribution to an official of such issuer.

#### "Reasonable Efforts" Provision

13. Q: What is the reasonable efforts provision contained in rule G-38?

A: This provision provides that a dealer will not be found to have violated rule G-38 if the dealer fails to receive from its consultants all required information about reportable political contributions and reportable political party payments and thus fails to report such information to the Board if the dealer can demonstrate that it used reasonable efforts in attempting to obtain the necessary information.

14. Q: What must a dealer do to avail itself of the reasonable efforts provision?

A: A dealer must: (1) state in the Consultant Agreement that Board rules require disclosure of consultant contributions to issuer officials and payments to state and local political parties; (2) send quarterly reminders to its consultants of the deadline for their submissions to the dealer of contribution and payment information; (3) include language in the Consultant Agreement to the effect that: (a) the Consultant Agreement will be terminated if, for any calendar quarter, the consultant fails to provide the dealer with information about its reportable contributions or payments, or a report noting that the consultant made no reportable contributions or payments, and such failure continues up to the date to be determined by the dealer but no later than the date by which the

dealer is required to send Form G-37/G-38 to the Board with respect to the next succeeding calendar quarter, such termination to be effective upon the date the dealer must send its Form G-37/G-38 to the Board, and (b) the dealer may not make any further payments to the consultant, including payments owed for services performed prior to the date of termination, as of the date of such termination; and (4) enforce the Consultant Agreement provisions described above in a full and timely manner and indicate the reason for and date of the termination on its Form G-37/G-38 for the applicable quarter.

15. Q: If a dealer does not include the termination and non-payment provisions in a Consultant Agreement or enforce any such provision that may be contained in the Consultant Agreement, would this constitute a violation of rule G-38?

A: No. Failure to follow the requirements of the reasonable efforts provision would not result in a violation of rule G-38; however, the dealer would be precluded from invoking the reasonable efforts provision as a defense against a possible violation for failing to disclose consultant contribution information which the consultant may have withheld from the dealer. Of course, whether or not a dealer would be charged with a violation of rule G-38 for failure to disclose consultant contribution information would depend upon a review of the facts and circumstances of the individual case by the appropriate regulatory agency.

#### Disclosure on Form G-37/G-38

16. Q: What information concerning consultants' political contributions and payments to political parties is<sup>4</sup> required to be reported to the Board on Form G-37/G-38?

A: Forms G-37/G-38 shall include the following information to the extent required to be obtained for a calendar quarter: (1) the name and title (including any city/county/state or political subdivision) of each official of an issuer and political party receiving reportable political contributions or reportable political party payments, listed by state, and contribution or payment amounts made and the contributor category; or (2) if applicable, a statement that the consultant reported that no reportable political contributions or reportable political payments were made; or (3) if applicable, a statement that the

<sup>4</sup> The MSRB changed "are" to "is." See letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine England, Assistant Director, Division, SEC, dated March 2, 2000.

consultant failed to provide any report of information to the dealer concerning reportable political contributions or reportable political party payments.

17. Q: Does a dealer have a reporting obligation if a consultant fails to provide a report for a particular quarter?

A: Yes. The dealer must disclose on Form G-37/G-38 if the consultant has failed to provide it with a report of its reportable political contributions and reportable political party payments.

18. Q: In listing consultants' reportable political contributions and reportable political party payments on Form G-37/G-38, how are the contributors to be identified?

A: By contributor category (i.e., company, individual, company controlled PAC or individual controlled PAC).

19. Q: How should look-back contributions and payments be disclosed on Form G-37/G-38?

A: Dealers must disclose, in addition to the other required information, the calendar quarter and year of any reportable political contributions and reportable political party payments that were made prior to the calendar quarter for which the form is being completed. Look-back contributions and payments should be disclosed on the Form G-37/G-38 for the quarter in which the consultant has first communicated with an issuer to obtain municipal securities business on behalf of the dealer.

#### Recordkeeping

20. Q: What records concerning consultants' political contributions and payments to political parties are required to be maintained?

A: Rule G-8(a)(xviii) requires a dealer to maintain: (1) Records of each reportable political contribution, (2) records of each reportable political party payment, (3) records indicating, if applicable, that a consultant made no reportable political contributions or no reportable political party payments, and (4) a statement, if applicable, that a consultant failed to provide any report of information to the dealer concerning reportable political contributions or reportable political party payments.

#### Effective Date of Requirements Concerning Consultants' Political Contributions and Payments to State and Local Political Parties

21. Q: What is the effective date of the amendments to rule G-38 concerning the disclosure of consultants' reportable political contributions and reportable political party payments?

A: The amendments will become effective on April 1, 2000. On the Forms G-37/G-38 for the second quarter of

2000 (required to be sent to the Board by July 31, 2000) dealers are required to disclose their consultants' reportable political contributions and reportable political party payments for the second quarter of 2000 and include, if applicable, reportable political contributions and reportable political party payments made since October 1, 1999 pursuant to the six-month look-back provision.

## 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 MSRB 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 MSRB 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

On January 17, 1996, the Commission approved Board rule G-38, on consultants.<sup>5</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 rule G-37, on political contributions and prohibitions on municipal securities business, rule G-20, on gifts and gratuities, and rule G-17, on fair dealing. Rule G-38 requires dealers to disclose information about their consultant arrangements to issuers and the public. On December 7, 1999, the Commission approved amendments to rules G-38, G-37 and G-8, on books and records, as well as revisions to the attachment page to Form G-37/G-38.<sup>6</sup> The amendments require dealers to obtain from their consultants information on the consultants' political contributions and payments to state and local political parties and to report such information to the Board on Form G-37/G-38. The amendments will become effective on April 1, 2000. In order 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 has determined to publish this fifth notice of interpretation which sets forth, in question-and-answer format, general guidance on the amendments that will become effective on April 1, 2000.<sup>7</sup> 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.

#### IV. Statutory Basis

The MSRB represents that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act<sup>8</sup> because it is 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.<sup>9</sup>

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

The MSRB 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 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

The MSRB has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change, which constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(1) of Rule

<sup>5</sup> Securities Exchange Act Release No. 36727 (January 17, 1996), 61 FR 1955 (1996). The rule became effective on March 18, 1996.

<sup>6</sup> Securities Exchange Act Release No. 42205 (December 7, 1999), 64 FR 69808 (1999).

<sup>7</sup> For previous notices, see MSRB Reports, Vol. 16, No. 2 (June 1996) at 3-5; Vol. 17, No. 1 (January 1997) at 15; Vol. 18, No. 2 (August 1998) at 13; and Vol. 19, No. 2 (April 1999) at 23. See also MSRB Rule Book (January 1, 2000) at 208-211.

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

<sup>9</sup> In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

19b-4 thereunder.<sup>11</sup> At any time within 60 days of the filing of the 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 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, NW, Washington, DC 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR-MSRB-00-05 and should be submitted by April 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-8650 Filed 4-6-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42601; File No. SR-NASD-99-74]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to an Exemption From NASD Conduct Rule 2710 for Closed-End Management Companies That Make Periodic Repurchases of Their Securities Under Rule 23c-3(b) of the Investment Company Act of 1940

March 30, 2000.

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 December 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Association filed an amendment to the proposed rule change on February 29, 2000, which Amendment entirely replaces and supersedes the initial proposal.<sup>3</sup> On March 20, 2000, the Association filed Amendment No. 2.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD Regulation proposes to amend NASD Conduct Rules 2710 ("Corporate Financing Rule") and 2830 to exempt public offerings by closed-end investment management companies that make periodic tender offers for their securities in compliance with Rule 23c-3(b)<sup>5</sup> of the Investment Company Act of

1940<sup>6</sup> (the "1940 Act") from the filing requirements and limitations on underwriting compensation of the corporate Financing Rule and, instead, subject such offerings to the sales charge limitations of NASD Conduct Rule 2830. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

#### 2710. Corporate Financing Rule—Underwriting Terms and Arrangements

- (a) No change.
- (b) Filing Requirements.
- (1)–(7) No change.
- (8) Exempt Offerings.

Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A)–(B) No Change.

(C) securities of [investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a "closed-end company" in Section 5(a)(2) of that Act] *"open-end" investment companies as defined in Section 5(a)(1) of the Investment Company Act of 1940 and securities of any "closed-end" investment company as defined in Section 5(a)(2) of that Act that:*

- (i) *makes periodic repurchase offers pursuant to Rule 23c-3(b) under the Investment Company Act of 1940; and*
- (ii) *offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933.*

(D)–(J) No change.

(9)–(12) No change.

(c)–(d) No change.

\* \* \* \* \*

#### 2830. Investment Company Securities

(a)–(c) No change.

(d) Sales Charge.

No members shall offer or sell the shares of any open-end investment company, *any Closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the 1940 Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933, or any "single payment" investment plan issued by a unit investment trust (collectively "investment companies") registered under the 1940 Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall*

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

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

<sup>3</sup> See February 28, 2000 letter and attachments from Joan C. Conley, Secretary, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation made changes to the language of the proposed new rule. Exhibits 2 through 4 that were attached to the original filing are incorporated by reference in Amendment No. 1.

<sup>4</sup> See March 17, 2000 letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division, SEC, ("Amendment No. 2"). Amendment No. 2 made minor technical changes to the proposal.

<sup>5</sup> 17 CFR 270.23c-3(b).

<sup>6</sup> 15 U.S.C. 80a.

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

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