three September put option contracts that were RAES-eligible (the 430, 440 and 450 contracts) ranged from five dollars ($5.00) to nine dollars ($9.00). The price of the least expensive October put option contract (with a 430 strike price) was approximately fourteen dollars and fifty cents ($14.50). In these circumstances, the Exchange found it was unable to provide an adequate number of OEX put option contracts for automatic execution to satisfy the demand of its firms and retail customers. In general, and especially in times of heightened market volatility, retail customers overwhelmingly prefer to have their option orders executed as quickly as possible at the published market quotes.

Lower-Priced OEX series Available for Customers

The Exchange is aware that historically, OEX order flow from retail customers is concentrated in lower-priced options, generally those under ten dollars ($10). When the number of available lower-priced options series decreases, so does retail customer order flow. Under the current index levels, in light of the significant increases in market volatility and the existing restriction under CBOE Rule 24.9, Interpretation and Policy .01, there are few low-priced OEX put option series available. For instance, in the aforementioned example, for the September contract month, no put option contract was available for under five dollars ($5), and the least expensive October put option contract was priced at more than fourteen dollars ($14). The effect of this limitation is to preclude investors from participating in the OEX put option market, except at higher than desired price levels. Smaller dollar value investors therefore lose the opportunity to enter into protective option strategies at a time when they may find it especially necessary to do so.

In response to these concerns, CBOE is proposing to change the percentage level under which additional series may be listed under unusual market conditions. The Exchange proposes to increase the percentage level for unusual market conditions from ten percent (10%) to twenty percent (20%). Under the unusual market conditions present on August 31, 1998, had the Exchange been able to list option contracts within twenty percent (20%) of the underlying index value, there would have been a sufficient number of series eligible for RAES and appropriately priced for retail customers. The theoretical option pricing model used by the Exchange's Research Department estimates that had the twenty percent (20%) limit been in effect, the lowest priced September put option contract available would have been the 390 with an estimated price of $0.625 (5/8). The estimated price of the corresponding October contract would have been four dollars ($4.00).

The number of additional series that will result from this proposed rule change, which affects only OEX options, will not be significant. For this reason, CBOE does not believe that the proposed rule change raises any capacity issues. The Exchange routinely monitors inactive option contracts and removes from listing those that do not have open interest and have little chance of trading.

By responding to the historically high volatility of the market in a manner that addresses the needs of its valued customers, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, and Section 6(b)(5) of that Act in particular, in that it will promote just and equitable principles of trade, will protect investors and the public interest, and will remove impediments to and perfect the mechanisms of a free and open market.

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

CBOE does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

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

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

(A) By order approve such proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–04 and should be submitted by March 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4429 Filed 2–22–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41053; File No. SR–MSRB–97–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Activities of Financial Advisors

February 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 1999,[3] the Municipal Securities

[3] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Board originally filed the proposed rule change on December 23, 1997. On April 6, 1998, the Board filed what would have been Amendment No. 1, but it was withdrawn because it did not adequately address certain disclosure and consent issues.

The Board filed Amendment No. 1 to the proposed rule change on April 16, 1998, which made certain technical changes and revised statements made by the Board concerning comments received on the draft amendment published by the Board for comment from its members. After further discussion with Commission staff, the Board filed Amendment No.

Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Board has filed with the Commission a proposed rule change which would amend Rule G–23 to require a dealer that has a financial advisory relationship with an issuer with respect to a new issue of municipal securities, prior to acting as a remarketing agent for such issue, to disclose in writing to the issuer that there may be a conflict of interest in acting as both financial advisor and remarketing agent for the securities with respect to which the financial advisory relationship exists and the source and basis of the remuneration the dealer could earn as remarketing agent on such issue. The proposed rule change requires that the issuer expressly acknowledge in writing to the broker, dealer, or municipal securities dealer receipt of such disclosure and consent both to the financial advisor acting as remarketing agent and to the source and basis of the remuneration. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

Rule G–23. Activities of Financial Advisors

(a)–(d) No change.

(e) *Remarketing Activities. No broker, dealer, or municipal securities dealer that has a financial advisory relationship with an issuer with respect to a new issue of municipal securities shall act as agent for the issuer in remarketing such issue, unless the broker, dealer, or municipal securities dealer has expressly disclosed in writing to the issuer:*

(i) that there may be a conflict of interest in acting as both financial advisor and remarketing agent for the securities with respect to which the financial advisory relationship exists; and

(ii) the source and basis for the remuneration the broker, dealer or municipal securities dealer could earn as remarketing agent on such issue.

This written disclosure to the issuer may be included either in a separate writing provided to the issuer prior to the execution of the remarketing agreement or in the remarketing agreement. The issuer must expressly acknowledge in writing to the broker, dealer, or municipal securities dealer receipt of such disclosure and consent to the financial advisor acting in both capacities and to the source and basis of the remuneration.

[(e)] *(f)* No change.

[(f)] *(g)* Each broker, dealer, and municipal securities dealer subject to the provisions of sections (d), [or] (e) or *(f)* of this rule shall maintain a copy of the written disclosures, acknowledgments and consents required by these sections in a separate file and in accordance with the provisions of rule G–9.

[(g)] *(h)* No change.

[(h)] *(i)* No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Terms of Substance of 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 statments.

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

1. Purpose

Rule G–23,[4] on activities of financial advisors, establishes disclosure and other requirements for dealers that act as financial advisors to issuers of municipal securities. The rule is designed principally to minimize the *prima facie* conflict of interest that exists when a dealer acts as both financial advisor and underwriter with respect to the same issue of municipal securities. Specifically, Rule G–23 requires a financial advisor to alert the issuer to the potential conflict of interest that might lead the dealer to act in its own best interest as underwriter rather than the issuer's best interest.[5]

The Board recently was made aware that, in certain instances, some financial advisors also have acted as remarketing agents for issues on which they advised the issuer. To address this situation and its potential conflict of interest, the Board filed a proposed rule change to require a financial advisor, prior to entering into a remarketing agreement for an issue on which it advised, to disclose in writing to the issuer the terms of the remuneration the financial advisor could earn as remarketing agent on such issue and that there may be a conflict of interest in changing from the capacity of financial advisor to remarketing agent. The proposed rule change also required that the financial advisor receive the issuer's acknowledgment in writing of receipt of such disclosures. Under the proposal, when these requirements are met, a dealer acting as financial advisor for an issue also could serve as remarketing agent for such issue.

Commission staff requested that the Board revise the proposed rule change to include a provision requiring issuer consent to the dealer's dual role, along with certain other technical language changes.[6] Amendment No. 2 revises this proposal to require that a dealer which has a financial advisory relationship with an issuer with respect to a new issue of municipal securities, prior to acting as a remarketing agent for such issue, disclose in writing to the issuer that there may be a conflict of interest in acting as both financial advisor and remarketing agent for the securities with respect to which the financial advisory relationship exists and the source and basis of the remuneration the dealer could earn as remarketing agent on such issue. This written disclosure to the

2 on January 14, 1999, which revises the rule language to address those disclosure and consent issues raised by the proposed rule change. This notice reflects the original proposal as modified by Amendments No. 1 and No. 2.

[4] *MSRB Manual,* General Rules, Rule G–23 (CCH) ¶3611.

[5] Rule G–23(d)(i) requires a financial advisor wishing to underwrite or place an issue of municipal securities on a negotiated basis to: (i) terminate in writing the financial advisory relationship with respect to such issue and obtain the issuer's express consent in writing to such acquisition or participation; (ii) disclose in writing to the issuer at or before such termination that there may be a conflict of interest in changing from the capacity of financial advisor to purchaser of or placement agent for the securities with respect to which the financial advisory relationship exists and obtain the issuer's express acknowledgment in writing of receipt of such disclosure; and (iii) expressly disclose in writing to the issuer at or before such termination the source and anticipated amount of all remuneration to the dealer with respect to such issue in addition to the compensation as financial advisor, and obtain the issuer's express acknowledgment in writing of receipt of such disclosure. If such issue is to be sold by the issuer at competitive bid, the issuer must expressly consent in writing prior to the bid to the financial advisor's acquisition or participation.

[6] *See supra* note 3.

issuer can be in a separate writing provided to the issuer prior to the execution of the remarketing agreement or the disclosure can be in the remarketing agreement. The issuer must expressly acknowledge in writing to the broker, dealer, or municipal securities dealer receipt of such disclosure and consent to the financial advisor acting in both capacities and to the source and basis of the remuneration. If the disclosure is made prior to the execution of remarketing agreement, the amount of the specific fee paid by the issuer to the remarketing agent still can be negotiated in the remarketing agreement. If the disclosure is made in the remarketing agreement, the dealer will have negotiated the amount of its fee with the issuer.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)[7] of the Act, which requires that the Board's rules 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

In May 1997, the Board published a notice (the ''Notice'') that, among other things, proposed for comment draft amendments to Rule G–23 concerning financial advisors also acting as remarketing agents for issues on which they advised the issuer.[8]

In response to its request for comments, the Board received comment letters addressing the draft amendments from the following 20 commenters.

- Allen Independent School District (''Allen ISD'').
- Artemis Capital Group (''Artemis'').
- Canton & Associates, Inc. (''Calton'').
- Carroll Independent School District (''Carroll ISD'').
- Dallas County Community College District (''Dallas County CCD'').
- First Southwest Company (''First Southwest'').
- Government Finance Officers Association (''GFOA'').
- Katy Independent School District (''Katy ISD'').
- Lehman Brothers Inc. (''Lehman Brothers'').
- Midland Independent School District (''Midland ISD'').
- Morton Clarke Fu & Metcalf Inc. (''Morton Clarke'').
- Newman and Associates, Inc. (''Newman'').
- North Harris Montgomery Community College District (''North Harris Montgomery CCD'').
- Pasadena Independent School District (''Pasadena ISD'').
- Rauscher Pierce Refsnes, Inc. (''Rauscher Pierce'').
- Smith Barney Inc. (''Smith Barney'').
- Southwest Securities (''Southwest'').
- State of Wisconsin Department of Administration (''State of Wisconsin'').
- The Bond Market Association (''BMA'').
- Wachovia Bank, N.A. (''Wachovia'').

The draft amendment, as published in the Notice, required a dealer acting as both financial advisor and remarketing agent for an issue to meet the same disclosure and other requirements as a dealer acting as financial advisor and later negotiating the underwriting or acting as placement agent for the issue (which includes terminating the financial advisory relationship with regard to the issue and making certain disclosures regarding the potential conflict of interest). The concern was that there may be a potential conflict of interest for the financial advisor because its advice regarding the type of issue (*i.e.*, variable rate) and the issue's timing and terms may be colored by the fees it expects to receive as remarketing agent.

Twelve commenters were opposed to the draft amendment,[9] while five commenters were in favor of the amendment.[10] One commenter misunderstood the draft amendment.[11] As an alternative to the draft amendment, this commenter suggested that ''[s]o long as there is full disclosure of all fees, risks, credit rating guidelines, and comparable interest rates *and* there is no conflict of interest in setting the lowest possible interest rate for a client, it seems contradictory to prohibit firms, probably best suited, from providing the additional work which is in their client's best interest.'' The seven Texas school districts opposed to the draft amendment[12] wrote substantially similar comment letters asking that the Board limit any regulation in this area to ''requiring full disclosure of all fees, risks, credit rating guidelines, and interest rates on comparable variable rate issues.'' They also stated that they should not be precluded from selecting a financial advisor to also serve as a remarketing agent as long as the financial advisor acts in an agency capacity (*i.e.*, not taking any underwriting risk).

Three commenters had general comments about the current role of financial advisors.[13] One of these commenters described the ''inherent conflict of interest'' for the financial advisor for an issue to resign and become the underwriter for the issue and urged the Board to strengthen Rule G–23 ''by eliminating the role switching allowed by the present rule and perpetuated by the proposed changes.''[14] Another of these commenters stated that ''there is a similar and perhaps even greater potential for conflicts of interest when a firm serves as financial advisor to an issuer for a planned financing and then resigns to serve as underwriter on that same financing.''[15] One of these commenters questioned ''the increased regulation of only a small portion of the

[7] 15 U.S.C. 78*o*–4(b)(2)(C).

[8] *See* MSRB Reports, Vol. 17, No. 2 (June 1997) at 3–16, ''Board Review of Underwriting Process.''

[9] Allen ISD, BMA, Carroll ISD, Dallas County CCD, First Southwest, Katy ISD, Lehman Brothers, Midland ISD, North Harris Montgomery CCD, Pasadena ISD, Smith Barney, and Wachovia. The remaining three commenters—Artemis, Newman, and State of Wisconsin—had general comments that were neither in favor of, nor opposed to, the draft amendment.

[10] Calton, GFOA, Morton Clarke, Rauscher Pierce, and Southwest.

[11] First Southwest had an incorrect impression that the draft amendment would have required a dealer to resign as an issuer's ''overall'' financial advisor in order to be able to act as a remarketing agent for the issuer on an issue of municipal securities. The provisions of Rule G–23 are applicable on an issue-specific basis and not on an issuer-specific basis. Thus, pursuant to the draft amendment published in the Notice, a dealer wishing to remarket an issue of municipal securities on which it acted as the financial advisor would make certain disclosures to the issuer and then resign as financial advisor to that issue while not being precluded from serving as financial advisor on other issues for this issuer.

[12] Allen ISD, Carroll ISD, Dallas County CCS, Katy ISD, Midland ISD, North Harris Montgomery CCD, and Pasadena ISD.

[13] Artemis, Newman, and State of Wisconsin.

[14] State of Wisconsin.

[15] Artemis.

financial advisory market.'' [16] This commenter further stated that ''[a]ny additional disclosure requirements placed on regulated financial advisors only continues to foster a[n] uneven playing field between regulated and unregulated financial advisors.''

GFOA stated that the draft amendment is consistent with its recommendations to state and local government issuers to avoid using a firm to serve as both the financial advisor and underwriter of a negotiated issue because conflicts of interest may arise. One commenter believed that the draft amendment was ''a reasonable extension of the existing requirement that firms resign as [financial advisors] to underwrite negotiated issues.'' [17]

Another commenter stated that, while opposed to the amendment, it would not object to ''a requirement that financial advisors disclose to issuers fees or compensation they could earn if they were selected to serve as remarketing agent . . . [and that] municipal issuers are competent to assess that disclosure and to determine for themselves whether it is appropriate to then select the financial advisor to act as remarketing agent.'' [18] Three other commenters noted that the decision should be left to the issuer as to whether there is a conflict of interest.[19]

Based on the comments received, the Board determined not to adopt the version of the amendment published in the Notice. Instead of requiring another broker, dealer, or municipal securities dealer to resign as financial advisor for an issue prior to acting as remarketing agent for that issue, the Board revised the proposed rule change to require a financial advisor, prior to entering into a remarketing agreement for an issue on which it advised, to disclose, in writing, to the issuer the source and basis of the remuneration the financial advisor could earn as remarketing agent on that issue and that there may be a conflict of interest in acting as both financial advisor and remarketing agent for the securities with respect to which the financial advisory relationship exists. The issuer must expressly acknowledge in writing to the dealer receipt of such disclosure and consent to the financial advisor acting in both capacities and to the source and basis of the remuneration.

The Board looked carefully at the different roles of underwriters and remarketing agents in adopting the proposed rule change. Rule G–23 currently is written to apply on an issue-specific basis. Rule G–23 requires a financial advisor to resign to act as underwriter on a specific negotiated transaction. The dealer can act as financial advisor to the issuer for any other issue—either during or after the underwriting. The potential conflict of interest in the specific underwriting is addressed in the rule by requiring the dealer to resign as financial advisor for the issue for the limited duration of the underwriting relationship, but permits a continuation of the long-term relationship between issuer and financial advisor.

In contrast to the underwriter's relationship with the issuer, the remarketing agent's relationship with the issuer may continue for an indefinite period of time. If a dealer were obligated to resign from a financial advisory role on a particular issue to serve as remarketing agent for that issue, that dealer may be placed in the anomalous position of providing financial advisory services for an issuer on a broad range of new and outstanding issues while being prohibited on a long-term basis from providing financial advisory services on the one issue for which it also provides remarketing services. This result would be more severe for financial advisors serving as remarketing agents than for financial advisors serving as underwriters. To avoid this unduly harsh result, the Board believes that the potential conflict of interest may be adequately addressed through disclosure in this case.

The proposed rule change and amendments thereto ensure that an issuer is made aware that there may be a conflict of interest for the financial advisor to change its capacity to that of remarketing agent for such issue and that the issuer is made aware of the source and basis of the remuneration the dealer could earn as remarketing agent on that issue. The issuer can then decide whether to allow the financial advisor for an issue to act as remarketing agent for that issue. The Board will monitor activities in this area and will not hesitate to consider further rulemaking if it becomes necessary.

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

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

(A) By order approve such proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the MSRB. All submissions should refer to File No. SR–MSRB–97–16 and should be submitted by March 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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[16] Newman.

[17] Rauscher Pierce.

[18] Smith Barney.

[19] BMA, Lehman Brothers and Wachovia.

[20] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

Public Information Campaign Collections—0960–0544. The Social Security Administration uses the information collected through feedback cards to determine media interest in broadcasting public information