fees shall, when aggregated with any sales charges and service fees paid by Blended Portfolios with respect to any Underlying Fund, shall not exceed the limits set forth in Article III, Section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the ''NASD'').

5. Investors Research will be the adviser to the Underlying Funds as well as the Blended Portfolios. Investors Research is governed by its obligations to the Underlying Funds and their shareholders and any allocation or reallocation by Investors Research of a Portfolio's assets among Underlying Funds would be required to be made in accordance with those obligations. Furthermore, Investors Research's own self-interest will prompt it to maximize benefits for all shareholders, and not disrupt the operations of any of Blended Portfolios or the Underlyng Funds.

6. Each Portfolio's shareholders will benefit from the allocation strategy of Investors Research, a strategy that they would not receive if they invested in the Underlying Funds directly. Additionally, in return for the indirect expenses of investing in the Underlying Funds, the Portfolios and their shareholders will benefit to the same extent as other shareholders in the Underlying Funds. The Underlying Funds and their shareholders will not be negatively affected as a result of investments made by a Portfolio. As there are potential benefits to shareholders of Blended Portfolios, and no additional costs to shareholders of the Underlyng Funds, applicants believe that there are net benefits to investors from this transaction. Accordingly, applicants believe that it is appropriate for the SEC to exercise its authority under section 6(c) to exempt applicants from the limitations of section 12(d)(1) to the extent requested.

B. Section 17(a)

1. Sections 17(a)(1) and 17(a)(2) of the Act provide, in substance, that it is unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security to, or purchase any security from, such investment company.

2. Section 17(b) of the Act provides that a person may file with the SEC an application for an order exempting a proposed transaction from section 17(a) and that the SEC shall issue such order if it is shown that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Under the proposed structure, Blended Portfolios and the Underlying Funds may be deemed to be affiliates of one another. The sale by the Underlying Funds of their shares to Blended Portfolios could thus be deemed to be principal transactions between affiliated persons under section 17(a). Applicants request an exemption under sections 6(c) and 17(b) from section 17(a) to the extent necessary to permit sales by the Underlying Funds of their shares to Blended Portfolios.[3] Applicants believe that the standards of sections 6(c) and 17(b) are met and that such relief should be granted for the reasons set forth under the discussion of section 12(d)(1).

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Blended Portfolios and each Underlying Fund will be part of the same ''group of investment companies'' as defined in rule 11a–3 under the Act.

2. No Underlying Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the directors of Blended Portfolios will not be ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Independent Directors'').

4. Before approving any advisory contract under section 15 of the Act, the directors of Blended Portfolios, including a majority of the Independent Directors, shall find that the advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of Blended Portfolios.

5. Any sales charges or service fees charged with respect to shares of Blended Portfolios, when aggregated with any sales charges and service fees paid by Blended Portfolios with respect to any Underlying Fund, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the NASD.

6. Applicants will provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: Monthly average total assets for each Portfolio and each of its Underlying Funds; monthly purchases and redemptions (other than by exchange) for each Portfolio and each of its Underlying Funds; monthly exchanges into and out of each Portfolio and each of its Underlying Funds; month-end allocations of each Portfolio's assets among its Underlying Funds; annual expense ratios for each Portfolio and each of its Underlying Funds; and a description of any vote taken by the shareholders of any Underlying Fund, including a statement of the percentage of votes cast for and against the proposal by Blended Portfolios and by the other shareholders of the Underlying Funds. Such information will be provided as soon as reasonably practicable following each fiscal year-end of Blended Portfolios (unless the Chief Financial Analyst shall notify Blended Portfolios or Investors Research in writing that such information need no longer be submitted).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[3] Section 17(b) applies to specific proposed transactions, rather than an ongoing series of future transactions. See Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c) can be used to grant relief from section 17(a) for an ongoing series of future transactions.

[Release No. 34–36950; File No. SR–MSRB–96–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–38 on Consultants

March 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on February 29, 1996,[1] 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 purpose of

[1] On March 7, 1996, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Jill C. Finder, Assistant General Counsel, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 7, 1996.

the proposed rule change is to provide interpretative guidance concerning rule G–38 on consultants. The Board has designated this proposal 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, which renders the proposal 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.

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

The Board is filing the proposed rule change to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business. Proposed new language is in italics.

* * * * *

Rule G–38 Questions and Answers

Consultants

1. Q: Who is considered a ''consultant'' pursuant to rule G–38?

A: Rule G–38(a)(i) defines ''consultant'' as any person used by a dealer to obtain or retain municipal securities business[2] *through direct or indirect communication by such person with an issuer on behalf of such dealer where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the dealer or any other person. The definition specifically excludes ''municipal finance professionals'' of the dealer, as that term is defined in rule G–37(g)(iv), because such individuals are covered by the requirements of rule G–37. The definition also excludes any person whose sole basis of compensation from the dealer is the actual provision of legal, accounting or engineering advice, services or assistance in connection with the municipal securities business that the dealer is seeking to obtain or retain.*

2. Q: What are examples of persons who would be excluded from the definition of consultant for providing legal, accounting or engineering advice, services or assistance to a dealer in connection with municipal securities business?

A: The exclusion would apply, for example, to a lawyer retained to conduct a legal analysis on a particular transaction contemplated by the dealer, or to review local regulations; an accountant retained to conduct a tax analysis or to scrutinize financial reports; or an engineer retained to perform a technical review or feasibility study. The exemption is intended to ensure that professionals who are engaged by the dealer solely to perform substantive work in connection with municipal securities business are not brought within the definition of consultant as long as their compensation is in consideration of only those professional services actually provided in connection with such municipal securities business.

3. Q: Would an attorney hired by a dealer to conduct a legal analysis on a transaction being contemplated by the dealer and then subsequently paid a finder's fee by the dealer for bringing that municipal securities business to the dealer be considered a consultant?

A: Yes, any attorney or other professional used by the dealer as a ''finder'' for municipal securities business is considered a consultant pursuant to rule G–38.

4. Q: Does the definition of consultant also encompass third parties who initiate contact with dealers to offer their services in obtaining or retaining municipal securities business through direct or indirect communication by such person with an issuer official?

A: Yes. The definition of consultant in rule G–38 does not distinguish between instances in which the dealer initiates contact with a third party to act as a consultant and instances in which the third party initiates contact.

5. Q: Does the definition of consultant encompass a lobbyist hired by the dealer if the only activity the lobbyist engages in on behalf of the dealer is to lobby state legislators for legislation which grants issuers authority to issue certain types of municipal securities?

A: No; however, if the lobbyist is also used by the dealer to obtain or retain municipal securities business through direct or indirect communication with an issuer on the dealer's behalf where the communication is undertaken for payment from the dealer or any other person, then the lobbyist would meet the definition of consultant.

6. Q: If an affiliated company of a bank introduces one of its customers (a municipal issuer) to the bank's dealer department for purposes of engaging in municipal securities business, and the dealer pays the affiliated company for this activity, would the affiliated company be a ''consultant'' under rule G–38?

A: Any person used by a dealer as a ''finder'' for municipal securities business would be considered a consultant under rule G–38. In this example, if the affiliated company is sued by the bank dealer to obtain or retain municipal securities business through direct or indirect communication by the affiliated company with the issuer on the dealer's behalf, and the affiliated company does so with the understanding of receiving payment from the dealer, then the affiliated company would be a consultant.

7. Q: Does the definition of consultant encompass a person retained by an affiliate or parent of a dealer if any portion of that person's activity relates to efforts to obtain municipal securities business for the dealer?

A: Yes, because the definition of consultant includes those who receive payment from the dealer or ''any other person'' for use in obtaining or retaining municipal securities business through communication with an issuer on behalf of the dealer. In such instances, the dealer would need to be in compliance with the provisions of rule G–38, as discussed below.

Consultant Agreement

8. Q: Rule G–38 requires dealers to evidence their consulting arrangements in writing. What must be included in this Consultant Agreement?

A: The Consultant Agreement must include, at a minimum, the name, company, role and compensation arrangement of each consultant used by the dealer.

9. Q: When must the dealer enter into the Consultant Agreement?

A: The Consultant Agreement must be entered into before the consultant engages in any direct or indirect communication with an issuer on the dealer's behalf.

Disclosure to Issuers

10. Q: Does rule G–38 require a dealer to disclose its consulting arrangements to an issuer with which it is engaging or seeking to engage in municipal securities business?

A: Yes; such disclosures must be in writing.

11. Q: What must be included in these written disclosures to issuers?

A: The written disclosures must include, at a minimum, the name, company, role and compensation arrangement with the consultant or consultants.

12. Q: When are dealers required to make their written disclosures concerning consultants to issuers?

A: The written disclosures must be made prior to the issuer's selection of any dealer in connection with the municipal securities business being sought, regardless of whether the dealer making the disclosure ultimately is the one to obtain or retain that business.

Disclosure to the Board

13. Q: Are dealers required to submit any reports concerning their consultants to the Board?

A: Yes. Dealers must submit to the Board, on a quarterly basis, reports of all consultants used by the dealers. These reports must be submitted on Form G–37/G–38.

14. Q: What information concerning consultants must be included on Form G–37/G–38?

A: For each consultant, dealers must report, in the prescribed format (refer to Form G–37/G–38), the consultant's name, company, role and compensation arrangement, as well as the dollar amount of any payment made to the consultant during the quarterly reporting period. If any payment made during the reporting period is related to the consultant's efforts on behalf of the dealer which resulted in particular municipal securities business, whether the municipal securities business was completed during that or a prior reporting period, then the dealer must separately identify that business and the dollar amount of the payment.

15. Q: If a dealer includes information concerning a particular consultant on a Form G–37/G–38 submission, must the dealer

[2] ''Municipal securities business'' as used in rule G–38 has the same meaning as in rule G–37(g)(vii): (i) negotiated underwriting (if the dealer is a manager or syndicate member); (ii) private placement; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer (on a negotiated bid basis); or (iv) the provision of remarketing agent services (on a negotiated bid basis).

continue to submit information concerning this consultant on subsequent Form G–37/G–38 submissions?

A. As long as the dealer continues to use the consultant to obtain or retain municipal securities business (i.e., has a continuing arrangement with the consultant), the dealer must report information concerning such consultant every quarter, whether or not compensation is paid to the consultant during the reporting period.

16. Q: What are the due dates for the submission of Form G–37/G–38?

A: The quarterly due dates are within 30 calendar days after the end of each calendar quarter (i.e., January 31, April 30, July 31 and October 31).

17. Q: Will the Board accept fax transmissions of Form G–37/G–38?

A: No. Dealers are required to submit Forms G–37/G–38 to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending.

18. Q: Are Forms G–37/G–38 submitted by dealers available to the public for review?

A: Yes. These forms are available to the public for inspection and photocopying at the Board's Public Access Facility in Alexandria, Virginia, and for review by the agencies charged with enforcement of Board rules.

19. Q: If a dealer has adopted a voluntary ban on political contributions and/or does not use consultants, is the dealer still required to submit a Form G–37/G–38?

A: Dealers are required to submit a Form G–37/G–38 to the Board if ANY one of the following occurred: (i) reportable political contributions or payments to political parties were made during the reporting period: (ii) the dealer engaged in municipal securities business (as defined in rule G–37(g)(vii)) during the reporting period; or (iii) the dealer used consultants during the reporting period (i.e., new or continuing relationships with consultants). Dealers are not required to submit a Form G–37/G–38 for a reporting period if all three of the following conditions are met for that particular reporting period: (i) there were no reportable political contributions or payments made to political parties; (ii) the dealer did not engage in municipal securities business; and (iii) the dealer did not use consultants.

Recordkeeping Requirements

20. Q. What records concerning consultants must dealers maintain?

A: Rule G–8, on books and records, required dealers to maintain: (i) a listing of the name, company, role and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement referred to in rule G–38(b); (iii) a listing of the compensation paid in connection with each such Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of issuers and a record of disclosures made to such issuers, pursuant to rule G–38(c), concerning each consultant used by the dealer to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrange.

21. Q. How long must dealers maintain their records concerning consultants?

A: Rule G–9, on preservation of records, requires dealers to maintain their records concerning consultants for a six-year period.

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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 comment it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

On January 17, 1996, the Commission approved Board rule G–38 on consultants.[3] 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 the 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. Recently, the Board has received inquiries from market participants concerning the applicability of various provisions 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 G–38, the Board has determined to publish this notice of interpretation which sets forth, in question-and-answer format, general guidance on rule G–38. The Board will continue to monitor the application of rule G–38, and, from time to time, will publish additional notices of interpretations, as necessary.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides 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

Because the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers, 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.

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 foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) or Rule 19b–4 thereunder because the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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

[3] Securities Exchange Act Release No. 36727 (Jan. 17, 1996), 61 FR 1955 (Jan. 24, 1996). The rule will become effective on March 18, 1996.

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 office of the Board. All submissions should refer to File No. SR–MSRB–96–02 and should be submitted by April 5, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6233 Filed 3–14–96; 8:45 am]

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[Release No. 34–36942; File No. SR–NSCC–96–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Establish the Daily Price and Rate File Phase of the Mutual Fund Profile Service

March 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 19, 1996, the National Securities Clearing Corporation (''NSCC'') 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 NSCC. On February 27, 1996, NSCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments from interested persons.

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

The proposed rule change seeks to amend NSCC's rules to establish a mutual fund profile service (''MFPS'') and to seek approval for implementation of the first phase of MFPS.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

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

The purpose of the proposed rule change is to establish MFPS for use by participating NSCC members and to implement the first phase of MFPS, the daily price and rate file. MFPS will provide an automated method of transmitting and receiving information pertaining to mutual funds through a centralized and standardized facility on a timely basis. MFPS will improve the flow of such data among participating NSCC members and will enable such members to make additions, changes, corrections, or deletions to such data as needed.

NSCC members will join the MFPS either as MFPS data providers, MFPS data receivers, or both. MFPS data receivers most likely will consist of broker-dealers. Mutual funds and fund complexes are likely to be MFPS data providers but in many cases also may participate as MFPS data receivers. MFPS data providers will transmit electronically MFPS data to NSCC in a format developed by NSCC. MFPS data providers will have the option as to the amount of data pertaining to them to include in MFPS. NSCC then will group and consolidate MFPS data to fit the format developed for distribution and will transmit the data to MFPS users. MFPS data will be transmitted between NSCC and MFPS users via mainframe and/or personal computer interfaces based on users' preferences, needs, and capabilities. At this time, NSCC has not determined whether an agreement will be necessary to permit an NSCC member to participate in MFPS.

To ensure that MFPS users are capable of adequately using the service, NSCC initially proposes to limit the scope of the MFPS data to include only daily prices and rates of funds. MFPS users will be able to deliver data relating to daily prices and daily dividend accrual rates for individual securities for a specific date. NSCC will consolidate all price and rate information received from MFPS data providers on a given day into a daily price and rate file and will distribute such file to MFPS data receivers. This file also will report price and rate corrections to users as they are identified by a fund. NSCC will maintain historical data within the database for a specified period of time.

Currently, NSCC members obtain fund price and rate information in a variety of ways including paper transmittals, facsimile, and telephone. NSCC believes that such methods of obtaining information generally are time consuming, labor intensive, and prone to error. Furthermore, NSCC believes the lack of automation and standardization of the process by which information is exchanged between NSCC members delays the receipt of time-sensitive data and contributes to processing difficulties resulting from incorrect or incomplete information. NSCC believes that MFPS will support and will expedite the processing of mutual fund transactions at the firms and funds.

Other components of MFPS will be implemented in one or more phases after approval of the daily price and rate file.[4] These other components will include (i) the ''member profile'' which will maintain data for each NSCC member participating in MFPS, including personnel contacts, telephone numbers, addresses, commissions payment procedures, and the processing capabilities and data for NSCC members which act as agents for other NSCC members; (ii) the ''security issue profile'' which will maintain information on each individual fund maintained in the profile, including minimum purchase or maintenance requirements, fund features, and various fund processing characteristics; and (iii) the ''distribution declaration information profile'' which will include projected and/or actual record dates, ex-dates, reinvestment dates, and payable dates for fund dividend and capital gain payments and also may include Rule 12b–1 plan and other commission payout information. NSCC anticipates that member profile information and security issue profile information will be distributed only to specific NSCC members or to all NSCC members, depending on the instructions of the MFPS data provider.

Due to the limited number of initial MFPS users and the limited value of the initial services, NSCC will not charge fees for MFPS at this time. When NSCC believes it is providing a value added service, NSCC will file with the Commission an appropriate rule change

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Julie Beyers, Associate Counsel, NSCC, to Christine Sibille, Division of Market Regulation, Commission (February 23, 1996).

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] Pursuant to Section 19(b)(2) of the Act, NSCC will be required to file with the Commission proposed rule changes regarding all future phases of MFPS prior to the implementation of each such phase.