be concentrated in their home state,'' but ''[l]arger advisers, with national businesses,'' should be regulated by the SEC and be ''subject to national rules.''[4]

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purpose of [section 203A].''[5]

4. Applicant states that it does not qualify for SEC registration under section 203A. Applicant submits that it does not have assets under management or act as an investment adviser to an investment company registered as such under the Investment Company Act. Applicant also states that it does not satisfy any of the exemptions from the prohibition on registration provided in rule 203A–2 under the Advisers Act.

5. Applicant asserts that it would be inconsistent with the purposes of section 203A if it were prohibited from registering with the SEC. Applicant submits that its activities, like those of the nationally recognized statistical rating organizations (''NRSROs'') and pension consultants, affect the national and international securities markets.

6. Applicant states that its research reports focus primarily on issues of national and international scope and significance. Applicant states that its advisory services are provided to only three clients for compensation, and that those entities utilize applicant's services in connection with the delivery of services to their own clients, many of which are substantial institutional investors, such as banks, insurance companies, and trust companies located throughout the world, that collectively manage and/or invest billions of dollars in both foreign and domestic securities. Applicant asserts that, the significant resources of these institutional investors, which may utilize its research and analyses in connection with their own investment management activities, substantially affect both national and international securities markets.[6]

7. Applicant states that the SEC exempted NRSROs from the prohibition on SEC registration although they typically do not have assets under management or act as investment advisers to registered investment companies because their activities have a significant effect on the national securities markets and the operation of federal securities laws.[7]

8. Applicant also states that the SEC exempted certain pension consultants from the prohibition on SEC registration even though they may not have assets under management or act as investment advisers to registered investment companies because they have a direct effect on the management of billions of dollars of plan assets, which in turn affects the national markets.[8]

9. Applicant also submits that it would be inconsistent with the purposes of section 203A(b)(1)(A) if it were subject to state regulation. Applicant states that, pursuant to this section, Congress preserved the states' ability to regulate certain investment adviser representatives of investment advisers registered with the SEC if those representatives provide services to retail clients. Applicant submits that Congress determined that the primary interest of the states is to maintain oversight of representatives with retail, and not institutional, clientele because the activities of these representatives predominately affect local markets. Applicant states that in defining the term ''investment adviser representative'' for purposes of section 203A(b), the SEC noted its belief that it is consistent with the intent of Congress to distinguish between retail and other clients.[9]

10. Applicant states that it does not provide investment advisory services directly to retail clients. Applicant submits that its three clients are institutions whose activities are national and international in scope. Further, applicant states that the advisory services that it provides to its clients are primarily used by such clients in connection with the services that they provide to their own clients, which are almost exclusively institutional.[10] Applicant states that, because its services are provided primarily to institutions, it is not the sort of investment adviser that Congress intended to be subject to regulation by and registration with the states.

11. Applicant believes that Congress intended that national investment advisers remain subject to SEC oversight, in part to focus SEC supervision and examination resources on investment advisers involved in interstate commerce. Applicant contends that the national and international nature of its activities lends itself to supervision and examination by one regulatory body.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1491 Filed 1–21–98; 8:45 am]

BILLING CODE 8010–01–M

[4] S. Rep. No. 293, 104th Cong., 2d Sess. 4 (1996).

[5] 15 U.S.C. 80b–3a(c).

[6] Applicant also notes that its services reach certain institutional investors even more directly. As described above, applicant gives seminar presentations for certain of NSI's clients, and holds individual meetings directly with certain clients of NSI and NST, all which are institutional investors with a national or international presence.

[7] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 at Section II.D.1. (May 15, 1997) [62 FR 28112 (May 22, 1997)].

[8] *Id.* at Section II.D.2.

[9] *Id.* at Section II.F.1.

[10] Of applicant's three clients, only NST has retail clients, all of whom are outside the United States. Applicant has no direct contacts with any of NST's retail clients.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23000; 812–10876]

Saratoga Advantage Trust, et al.; Notice of Application

January 14, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, and from certain disclosure requirements under the Act.

SUMMARY OF APPLICATION: The order would permit the investment adviser to an open-end registered investment company to enter into subadvisory contracts with subadvisers without receiving shareholder approval, and grant relief from certain disclosure requirements regarding advisory fees paid to subadvisers.

APPLICANTS: Saratoga Capital Management (the ''Manager''), and the Saratoga Advantage Trust (the ''Trust'').[1]

FILING DATES: The application was filed on November 24, 1997, and amended on December 31, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a

[1] Applicants request that the relief apply to any open-end registered investment company for which the Manager or any entity controlling, controlled by, or under common control with the Manager acts as investment adviser. All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 9, 1998 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicants: 1501 Franklin Avenue, Mineola, NY 11501.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Nayda B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act. The Trust currently is comprised of seven separate investment portfolios (the ''Portfolios''), each of which has its own investment objectives and policies.

2. The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Trust has entered into an investment management agreement (''Management Agreement'') with the Manager under which the Manager serves as investment adviser to the Trust and its Portfolios. The Manager retains investment advisers registered under the Advisers Act to serve as investment advisers to the Portfolios (''Advisers''). Currently each Portfolio has a single Adviser although the Manager is authorized to select multiple Advisers for each Portfolio.

3. All Advisers currently must be approved by the Trust's board of trustees (''The Board'') and by shareholders. In evaluating prospective Advisers, the Manager considers, among other factors, each Adviser's: level of expertise; relative performance and consistency of performance to investment discipline or philosophy; investment personnel and financial strength; and quality of service and client communication. The Manager recommends to the Board whether investment advisory agreements with Advisers (''Advisory Agreements'') would be renewed, modified or terminated. In undertaking this evaluation, the Board recognizes that a portion of the fees charged by the Manager pursuant to the Management Agreement will be paid by the Manager to the Advisers, and the Board will be provided with, and will evaluate, information concerning the fees paid by the Manager to the Advisers pursuant to the Advisory Agreements.

4. Subject to the supervision and direction of the Manager and, ultimately, the Board, each Adviser's responsibilities are to manage the securities investments held by the Portfolio it serves in accordance with the Portfolio's stated investment objective and policies, and exercise discretionary authority to make investment decisions for the Portfolio and place orders to purchase and sell securities on behalf of the Portfolio.

5. The Trust's investment advisory arrangements differ from those of traditional investment companies. In the case of the Trust, the Manager does not make the day-to-day investment decisions for the Portfolios. Instead, the Manager establishes an investment program for each Portfolio and selects, supervises and evaluates the Advisers who make the day-to-day investment decisions for the respective Portfolios. In addition to selecting and monitoring Advisers, the Manager supervises the Portfolio's overall investment programs, including advising and consulting with the Trustees and the Advisers. The Manager monitors the performance of the Trust's outside service providers, including the Trust's administrator, transfer agent and custodian. The Manager also pays salaries, fees and expenses of the Trust's officers, trustees or employees that are directors, officers or employees of the Manager.

6. In return for providing the services described above, the Manager currently receives a fee from each Portfolio, computed as a percentage of net assets. The Manager pays each Adviser out of this fee.

7. Applicants request an order permitting the Manager to enter into and materially amend Advisory Agreements without obtaining shareholder approval. Applicants also request an exemption from the disclosure provisions described below regarding disclosure of fees paid to each Adviser. Each Portfolio will disclose the following (both as a dollar amount and as a percentage of a Portfolio's net assets): (a) Aggregate fees paid to the Manager and Affiliated Advisers (as defined below); and (b) aggregate fees paid to Advisers other than Affiliated Advisers (as defined below) (''Aggregate Fee Disclosure''). For purposes of this application, an Affiliated Adviser is an Adviser that is an ''affiliated person'', as defined in section 2(a)(3) of the Act, of the Portfolio or Manager, other than by reason of serving as an Adviser of a Portfolio.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Certain items of Form N–1A, the registration statement used by open-end investment companies, when taken together, may require each Portfolio to disclose compensation paid to the investment company's investment adviser and the method of computing the fee.

3. Form N–14, the registration form for business combinations involving investment companies, requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed'' by Form N–1A.

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the ''1934 Act''). Certain items of Schedule 14A require the following: (a) A proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees using the format prescribed in item 2 of Form N–1A; and (b) a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' the ''terms of the contract to be acted upon,'' and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to the advisers.

5. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Form N–SAR requires investment companies to disclose the rate schedule for fees paid to investment advisers.

6. Regulation S–X specifies the requirements for financial statements required to be included as part of the registration statements and shareholder reports filed with the SEC under the Act and the Securities Act of 1933. Section 6–07.2 of Regulation S–X may require that the Trust's financial statements contain information concerning fees paid to the Advisers.

7. Applicants believe that investors choose to invest in the Portfolios because of the Manager's experience and expertise in evaluating, selecting and supervising Advisers. Applicants believe that investors expect the Manager and the Board to select the Advisers for each Portfolio based on an Adviser's experience and expertise. Applicants contend that it is consistent with the protection of investors to vest the selection and supervision of the Advisers in the Manager because shareholders expect that the Manager will use its expertise to select the most able advisers.

8. Applicants believe that permitting the Manager to perform those duties for which shareholders compensate the Manager—the selection, supervision and evaluation of Advisers—without incurring unnecessary delay or expense is appropriately in the interests of the Portfolios' shareholders and will allow each Portfolio to operate more efficiently. Applicants contend that, without the delay inherent in holding shareholder meetings, the Portfolios will be able to act more quickly and with less expense to replace Advisers when the Manager and the Trustees believe that a change would benefit a Portfolio. Applicants assert that, without exemptive relief, the Trust would be required to call meetings of shareholders whenever the Manager determined to employ new or additional Advisers, or to approve a new Advisory Agreement after an assignment or due to a material change in terms.

9. Applicants argue that the relief requested from disclosure requirements would provide the Manager with more flexibility in negotiating fees with new Advisers. Applicants state that some Advisers use a ''posted'' rate schedule to set their fees, and that some Advisers would be unwilling to negotiate fees lower than the ''posted'' rate schedule, unless the rates negotiated for the Portfolios are not publicly disclosed. Disclosure of Adviser's fees would therefore lessen the Manager's bargaining power, and would not benefit shareholders. Applicants state that investors will know the rate of investment advisory fees each Portfolio will bear. Applicants assert that investors would still be able to determine whether the cost of investment advisory services, including the selection and supervision of Advisers, is competitive with services and costs which the investor could obtain elsewhere.

10. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief satisfies this standard.

Applicants' Conditions

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

1. Within 90 days of the hiring of any Adviser, the affected Portfolio will furnish its shareholders with all information about a new Adviser or Advisory Agreement that would be included in a proxy statement. The information will include any change in the disclosure caused by the addition of a new Adviser of a Portfolio. The Portfolio will meet this condition by providing shareholders, within 90 days of the hiring of an Adviser, with an information statement that meets the requirements of Regulation 14C and Schedule 14C under the 1934 Act, and Item 22 of Schedule 14A under the 1934 Act.

2. Before a Portfolio may rely on the order requested, the operation of the Portfolio as described in the application will be approved by a majority of each Portfolio's outstanding voting securities, as defined in the Act, or, in the case of a new Portfolio whose public shareholders purchase shares on the basis of a prospectus containing the disclosure addressed in condition 3 below, by the sole shareholder before offering of shares of the Portfolio to the public.

3. The Trust will disclose in its prospectus the existence, substance, and effect of the order. In addition, the Portfolios will hold themselves out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee Advisers and to recommend their hiring, termination, and replacement.

4. The Manager will provide general management and administrative services to the Trust and its Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's securities portfolio, and, subject to review and approval by the Board, will: (i) Set the Portfolios' overall investment strategies; (ii) recommend and select Advisers; (iii) allocate and reallocate the Portfolios' assets among multiple Advisers, if more than one exists; (iv) monitor and evaluate the performance of Advisers, and (v) implement procedures to ensure that the Advisers comply with the Portfolio's investment objectives, policies, and restrictions.

5. At all times, a majority of the Board will not be ''interested persons'' of the Trust within the meaning of the Act (''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

6. When an Adviser change is proposed for a Portfolio with an Affiliated Adviser, the Trust's Trustees, including a majority of Independent Trustees, will make a separate finding, reflected in that Trust's Board minutes, that such change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Adviser derives an inappropriate advantage.

7. The Manager will not enter into an Advisory Agreement with any Affiliated Adviser without that Advisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

8. Each Portfolio will disclose in the Trust's registration statement the Aggregate Fee Disclosure.

9. The Manager will provide the Board, no less frequently than quarterly, information about the Manager's profitability for each Portfolio. The information will reflect the impact on profitability of the hiring or termination of any Advisers during the quarter.

10. Whenever an Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the Managers' profitability.

11. At all times, independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Trust. The selection of such counsel will be placed within the discretion of the Independent Trustees.

12. No Trustee or officer of the Trust or partner or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in an Adviser except for: (i) Ownership of interests in

the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either an Adviser or any entity that controls, is controlled by, or is under common control with an Adviser.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1493 Filed 1–21–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39546; File No. SR–MSRB–97–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting and Transaction Assessments

January 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–17). The proposed rule change is 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 filing herewith a proposed rule change to rule A–13 on Underwriting and Transaction Assessments. The proposed rule change to rule A–13 would clarify that the fee currently assessed for inter-dealer transactions reported to the Board will not automatically apply to customer transactions once they are reported under Board rule G–14. The text of the proposed rule change is below. Additions are in italics. Rule A–13 + Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers.

(a)–(b) No change.

(c) Transaction Assessments. Each broker, dealer and municipal securities dealer shall pay to the Board a fee equal to .0005% ($.005 per $1,000) of the total par value of *inter-dealer* municipal securities sales that it reports to the Board under rule G–14(b). For those transactions reported to the Board by a broker, dealer or municipal securities dealer on behalf of another broker, dealer or municipal securities dealer, the transaction fee shall be paid by the broker, dealer or municipal securities dealer that reported the transaction to the Board. Such broker, dealer or municipal securities dealer may then collect the transaction fee from the broker, dealer or municipal securities dealer on whose behalf the transaction was reported.

(d)–(f) 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 statements.

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

1. Purpose

The Board currently assesses dealers a fee equal to .0005% of par value of the dealers' inter-dealer sales transactions in municipal securities, as reported to the Board under rule G–14(b). As indicated in Board rule filings and notices concerning the fee, this fee was intended to apply exclusively to inter-dealer transactions.[1] Since the language of rule A–13 was written when inter-dealer transactions were the only transactions that were being reported to the Board, rule A–13(c) now simply states that the transaction assessment will apply to ''municipal securities sales that [the dealer] reports to the Board under rule G–14.'' In its rule filings and notices on rule A–13(c), the Board stated its intent to add customer transactions to those reported under rule G–14(b). The Board also noted that, once customer transactions are reported to the Board under rule G–14, the Board would review the use of customer transaction activity as a means of assessing fees. The Board, however, did not intend that the fee set for inter-dealer transactions would apply automatically to customer transactions that are reported under rule G–14.

The Board is in the process of implementing the customer transaction phase of the Transaction Reporting Program. This will result in dealer-customer transactions, as well as inter-dealer transactions, being reported to the Board under rule G–14(b), beginning in March 1998. To clarify that the current language of rule A–13(c) applies only to inter-dealer transactions, the proposed rule change simply adds the word ''inter-dealer'' to modify ''municipal securities sales.'' The Board continues to intend to review customer transaction activity, once it becomes available in the Transaction Reporting Program, as a means to more equitably assess fees.

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act, which provides that the Board's rules shall:

> provide that each municipal securities broker and municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

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

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers and is simply a technical change in rule language not affecting the effect or application of the rule.

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

Because the proposed rule change is merely a technical correction of rule language, the Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section

[1] *See, e.g.,* SR–MSRB–95–13 and Commission Order of Approval, Securities Exchange Act Release No. 37197 (May 10, 1996).