Act and in particular with Section 17A of the Act.[12]

It is therefore ordered, pursuant to Section 19(a) of the Act, that MBSCC's temporary registration as a clearing agency (File No. 600–22) be, and hereby is, extended through March 31, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Dos. 99–8064 Filed 3–31–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41217; File No. SR–MSRB–97–16]

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

March 26, 1999.

I. Introduction

On December 23, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB''), submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to activities of financial advisors. The Board filed Amendments No. 1[3] and No. 2[4] to the proposed rule change on April 16, 1998 and January 14, 1999, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 23, 1999.[5]

The Commission received one comment letter on the proposal.[6] the commenter objected to the proposed rule change because it does not require the financial advisor to inform the issuer of its intent to act as remarketing agent on an issue of securities prior to beginning work on that issue. In response, the MSRB stated that financial advisors may not know at the beginning stage of work on an issue whether the issue will be long or short term and whether it will be available to act as a remarketing agent for the issue when it is remarketed.[7] The Commission believes the proposal provides the issuer with sufficient information and time to select a suitable remarketing agent. For these reasons and those set forth below, this order approves the proposed rule change, as amended.

II. Description of the Proposal

Rule G–23,[8] 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.[9]

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, a proposed rule change was filed to require a financial advisor, prior to entering into a remarketing agreement for an issue on which it advised the issuer, 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 that issue.

Commission staff requested that the proposed rule change be revised to include a provision requiring issuer consent to the dealer's dual role, along with certain other technical language changes.[10] amendment No. 2 revises this proposal to require that 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 that 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 disclose the source and basis of the remuneration the dealer could earn as remarketing agent on such issue. This written disclosure to the 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 the remarketing agreement, the amount of the specific fee paid by the issuer to the remarketing agent still may 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.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C)[12] of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Commission believes the proposed rule change will prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade by requiring a dealer that has a financial advisory

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[12] 15 U.S.C. 78q–1.

[13] 17 CFR 200.30–3(a)(50)(i).

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

[2] 17 CFR 240.19b-4.

[3] Amendment No. 1 made certain technical changes are revised statements concerning comments received on the draft amendment published by the Board for comment from its members.

[4] After discussion with Commission staff, the MSRB filed Amendment No. 2 to revise the language of Rule G–23 to address certain disclosure and consent issues raised by the proposed rule change.

[5] *See* Exchange Act Release No. 41053 (Feb. 12, 1999, 64 FR 8894.

[6] Letter from Robert E. Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, to Secretary, SEC, dated March 15, 1999.

[7] Letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Sonia Patton, Attorney, SEC, dated March 22, 1999.

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

[9] *See supra* note 8.

[10] *See supra* note 4.

[11] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should improve efficiency and competition because it prevents all municipal securities dealers from acting as both financial advisor and remarketing agent with respect to a new issue of securities without first obtaining the issuer's consent. 15 U.S.C. 78f(b)(7).

[12] 15 U.S.C. 78o–4(b)(2)(C).

relationship with an issuer of securities, prior to acting as remarketing agent for the issuer's securities, to disclose in writing to the issuer that there may be conflict of interest and the source and basis of the remuneration the dealer expects to earn as remarketing agent. This will enable the issuer to assess the conflict of interest, and decide if it wishes to proceed or take other action. The Commission believes the proposed rule change further prevents fraudulent and manipulative acts and practices by requiring the issuer's consent to the dealer acting as remarketing agent and to the source and basis of remuneration. The Commission believes this requirement will enhance the likelihood that a financial advisor who wishes to act as remarketing agent for an issue on which it advised the issuer acts in the issuer's best interest and not its own best interest as remarketing agent.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) [13] of the Act, that the proposed rule change, as amended, (SR–MSRB–97–16) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8065 Filed 3–31–99; 8:45 am]

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41212; File No. SR–PCX–99–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Fee Schedule Changes

March 24, 1999.

Pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 by the Exchange. On March 4, 1999, the Exchange filed as amendment (''Amendment No. 1'') to the proposed rule change.[3] In Amendment No. 1, the Exchange designated the portion of the proposed rule change dealing with customer transaction charges as constituting a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the part of the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Exchange is proposing to change its Schedule of Fees and Charges for Exchange Services as discussed below. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] *See* letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Michael A. Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated March 3, 1999. The Commission received a draft of the proposed amendment on February 26, 1999, which the Commission has accepted as a pre-filing pursuant to Rule 19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has represented that the proposed rule change will not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(f)(6) under the Act. *See* note 3 above. Also, in a telephone conversation on February 26, 1999, between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, and Joseph Morra, Attorney, Division, SEC, the Exchange requested that the Commission waive the 30-day waiting period under Rule 19b–4(f)(6) for the portion of the filing relating to customer fees.

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

1. Purpose

The Exchange proposes four changes to its Schedule of Fees an Charges for Exchange Services by reducing its customer transaction charges, increasing its Market Maker transaction charges and fees, reducing its LMM Book transaction charges, and increasing its Member dues.

Customer Charges. Currently, for manual transactions, the Exchange charges its customers $0.15 per contract side for premiums less than one dollar and $0.35 per contract side for premiums one dollar or greater. For block transactions with premiums one dollar or greater, the Exchange charges its customers $0.35 per contract for the first four hundred contracts of a block trade and $0.25 per contract for all contracts over four hundred. The Exchange charges its customers $0.30 per contract side for Pacific Options Exchange Trading System (''POETS'') transactions, with a minimum charge of $0.35 per trade. Also, the Exchange charges a Book execution fee of $0.45 per contract side for all customer Book executions. To simplify rates and reduce costs for customers, the Exchange proposes to reduce transaction charges for customers to $0.12 per contract side, which will apply to all manual transactions (including block transactions) and POETS automated transactions. Further, the Exchange proposes to reduce Book execution fees to $0.20 per contract side for all Book transactions, except accommodation/liquidation transactions,[6] which remain unchanged. The Exchange proposes to make these changes in an effort to remain competitive, attract customer order-flow, and reduce customer costs.

Market Maker Charges. The current transaction charges for Market Makers are $0.095 per contract site for equity options, $0.11 per contract side for index options, and $0.085 per contract side for POETS transactions. Also, the Exchange currently charges a monthly Market Maker fee of $660, which is applied to all Market Makers after a six-month initial waiver person. The Exchange proposes to increase transaction charges for Market Makers to $0.15 per contract side for all manual and POETS transactions. In addition,

[6] An accommodation/liquidation transaction is a book-executed transaction for a premium less than 1/16th. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Joseph Morra, Attorney, Division, SEC, on March 23, 1999.